SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 65

CRESCENT EXPRESS LINES, INC., APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HUDSON TRANSIT LINES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 19-339

CRESCENT EXPRESS LINES, INC., Plaintiff,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

HUDSON TRANSIT LINES, INC., and MOUNTAIN TRANSIT CORPORATION, Intervenors

PRAECIPE FOR TRANSCRIPT OF RECORD

TO THE CLERK:

Will you please prepare a transcript of this record in the above entitled cause to be transmitted to the Supreme Court of the United States pursuant to the appeal of the plaintiff to said Court heretofore filed and allowed and incorporate in said transcript the following:

1. Summons.

2. Amended complaint.

3. Answer of the Interstate Commerce Commission to the Amended Complaint verified December 14, 1942.

4. Answer of the Interstate Commerce Commission verified November 11, 1942.

5. Answer of the United States of America to the Amended Complaint dated December 2, 1942.

6. Answer of the Intervenor, Mountain Transit Corporation to the Amended Complaint verified December 22, 1942.

7. Answer of the intervenor, Hudson Transit Lines, Inc., dated October 30, 1942.

8. Petition for Appeal and Order Allowing Appeal.

[fol. 3] 9. Assignment of Errors.

10. Statement as to Jurisdiction of the Supreme Court (with exhibits attached thereto consisting of Decree and Judgment entered by the Court; Findings of Fact and Conclusions of Law, Opinion of the Court, copy of order of Interstate Commerce Commission dated September 2, 1941 and copy of order of Interstate Commerce Commission dated June 20, 1938).

11. Citation on Appeal.

12. Notice of Appeal.

13. Notice to the Attorney General of the State of New York and proof of service.

14. Affidavit of service of George H. Rosen, verified April 21, 1943 showing service of papers on the Attorney General.

15. Certified transcript of record before Interstate Commerce Commission.

16. Affidavit of Beatrice Martin showing proof of service of papers.

17. Praecipe for Transcript of Record.

18. Clerk's certificate.

Dated: April 21, 1943.

George H. Rosen, Attorney for Plaintiff, Office & P. O. Address, 302 Broadway, Borough of Manhattan, New York City.

[fols. 4-5] In District Court of the United States

[Title omitted]

Summons—Filed October 7, 1942

To the above named Defendant:

You are hereby summoned and required to serve upon George H. Rosen, plaintiff's attorney, whose address 302 Broadway, New York City, an answer to the complaint which is herewith served upon you, within 60 days after service of

this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

George J. H. Follmer, Clerk. By —— ——, Deputy Clerk. (Seal of Court.)

Date: 9/30/42.

[fol. 6] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 19-339

CRESCENT EXPRESS LINES, INC., Plaintiff,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

AMENDED COMPLAINT—Filed December 11, 1942

Comes now Crescent Express Lines, Inc., plaintiff herein by George H. Rosen, its attorney, and respectfully shows unto the Court as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, having its principal office in the City of New York, State of New York, in this District.

2. The United States of America is a political entity against which by general Act of Congress this suit may be brought to annul, set aside and enjoin enforcement of an order of the Interstate Commerce Commission.

3. The Interstate Commerce Commission is a statutory tribunal created by Act of Congress on February 4, 1887, and is, by further general Act of Congress, permitted to be named as an additional defendant in suits of this character respecting the validity of its orders.

4. This suit is brought under the provisions of the United States Code Title 28 Sec. 41 (28) to enjoin, suspend, set aside and annul an order of the Interstate Commerce Commission, Division 5 dated September 2, 1941, a copy of which is annexed hereto marked Exhibit "A", and the

[fol. 7] order of the Commission dated March 17, 1942, a copy of which is annexed hereto marked Exhibit "B", and the order of the Commission dated July 13, 1942, a copy of which is annexed hereto marked Exhibit "C".

5. That Crescent Express Lines, Inc., operates motor vehicles for the transportation of passengers for hire between points in the City of New York, New York, to various points in Sullivan and Ulster Counties, State of New York via the State of New Jersey and which operations were conducted prior to and since June 1, 1935.

6. At all times hereinafter mentioned and now the aforesaid transportation of passengers for hire has been conducted as a common carrier by motor vehicle within the purview of the Motor Carrier Act of 1935.

7. That predecessors of plaintiff duly filed an application with the Interstate Commerce Commission under the Motor Carrier Act of 1935, and "grandfather" operating rights were claimed under the provisions of the said Motor Carrier Act applicable thereto and the Interstate Commerce Commission assigned file number MC 78980 to the said application.

8. Thereafter said operating rights were purchased by plaintiff, and the Interstate Commerce Commission, on or about October 31, 1940 duly substituted plaintiff as the person entitled to said rights, and plaintiff was and now is entitled to the operating rights in the within matter.

9. That heretofore and on or about June 20, 1938 the Interstate Commerce Commission issued its order dated June 20, 1938 granting operating rights to plaintiff's predecessors as more fully set forth therein, a copy of which is annexed hereto and marked Exhibit "D", and [fol. 8] whereby the said Commission granted "grandfather" rights to operate as follows:

> "The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, over the regular route, between fixed termini, and to and from intermediate and off-route points, during the season extending from the 1st of June to the 1st of October, inclusive
> * * *."

10. That on or about September 2, 1941 without any further evidence or hearing, the Commission by Division 5 made a new order changing the rights granted as set forth in said order, a copy of which is annexed hereto marked Exhibit "A" whereby rights were granted to the plaintiff as follows:

> "The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than six passengers in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during the season extending from June 1, to October 1, inclusive, over irregular routes * * *."

11. That thereafter pursuant to the statute and rules of the Interstate Commerce Commission, applicable thereto and within the time prescribed therefor, plaintiff filed objections and protest to said order of September 2, 1941 but the said objections and protest were denied by the Commission by its order of March 17, 1942, a copy of which is annexed hereto marked Exhibit "B".

12. That thereafter and pursuant to the statute and rules of the Interstate Commerce Commission, applicable thereto and within the time prescribed therefor, plaintiff duly filed its petition with the Interstate Commerce [fol. 9] Commission asking for reconsideration by the whole Commission of the order dated September 2, 1941, or for a hearing, by petition dated April 3, 1942, but the said Interstate Commerce Commission denied said petition for reconsideration or hearing by order dated July 13, 1942, a copy of which order is annexed hereto and made a part hereof marked Exhibit "C", and that plaintiff has exhausted all proceedings available or allowed to it before the said Interstate Commerce Commission pursuant to the statute and rules in such case made and provided.

13. That operations of the plaintiff and/or its predecessors on June 1, 1935 and subsequent thereto down to the present time were over the route or routes or within the

territory for which the application was made and has been so operated since that time.

14. Upon information and belief that the Interstate Commerce Commission has in the within proceeding exceeded its statutory power granted by the Motor Carrier Act of 1935 and amendments thereto as the same is applicable in making the order of September 2, 1941, (a) by limiting or restricting the rights granted by its order of September 2, 1941 so that plaintiff should transport not more than six passengers in any one vehicle, but not including the driver thereof and not including children under ten years of age who do not occupy a seat or seats; (b) by limiting or restricting the rights granted by its order of September 2, 1941 to door-to-door service; (c) by limiting or restricting operations over irregular routes; (d) by limiting or restricting the rights granted by its order of September 2, 1941 to non-scheduled operations; and (e) by limiting or restricting the rights granted by its order of September 2, 1941 to "special operations."

15. That the said order of September 2, 1941 made by [fol. 10] said Interstate Commerce Commission was contrary to law and in excess of the power of the said Commission, and upon informati and belief was made for the purpose of restricting and limiting plaintiff to the use of 7 passenger sedans as distinguished from larger size vehicles despite the fact that the Motor Carrier Act of 1935 and amendments thereto, provides that no terms, conditions or limitations shall restrict the rights of the carrier to add to its equipment and facilities as the development of the business and the demands of the public shall require, and despite the fact that said statute does not limit motor vehicles to any particular type; that said alleged restrictions were made to circumvent the law and to act outside the provisions of the law, and to that end said Commission acted illegally, unconstitutionally, and its order of September 2, 1941 so far as it restricts the rights granted should be enjoined, set aside, suspended and annulled, and the order of June 20, 1938 reinstated.

16. Upon information and belief there is no factual or legal basis for limiting the rights granted to transport only six passengers besides the driver or children under ten years of age; that the restriction preventing the plaintiff

from transporting more than 6 adult passengers and granting authority to transport any number of children under ten years of age who do not occupy seats has no proper basis because it fails to take into consideration that a large number of children under ten years of age might require transportation with their parents necessitating the use of larger vehicles, and even though the said children remained standing up for the duration of the trip, the empty seats could not be used for fare-paying passengers.

17. The tariffs filed with the said Commission under its rules and regulations permit a charge of one-half fare for children between 5 and 12 years of age.

[fol. 11] 18. The distance between New York and Monticello one of the principal towns in the County of Sullivan, is about 95 miles and a child for whom half fare was paid needs and is entitled to a seat for a trip of such a distance and the order of September 2, 1941 by making the restriction aforesaid, would bar and prevent such a child or children from having a seat or seats all in contravention of ordinary safety and health requirements for the transportation of such children.

19. The said order of September 2, 1941 is unlawful and illegal, and without proper foundation insofar as it restricts the operating rights to non-scheduled rights, and such provision is directly contrary to the provisions of the order of June 20, 1938; the conclusions made by the Commission and contained in the order of the Commission dated June 20, 1938 were correct, but the action of the Commission in making the order dated September 2, 1941 was incorrect, illegal and void because it was not based upon any new, additional or different evidence as no further hearings were held and therefore no facts were before the Commission sufficient to sustain said order of September 2, 1941, and further there is nothing in the Motor Carrier Act of 1935 or amendments thereto or in the rules and regulations of the Interstate Commerce Commission referring to schedules or requiring schedules and the inclusion or restriction to non-scheduled operation was not within the scope of the statute, and was unreasonable and arbitrary.

20. The order of September 2, 1941 is incorrect, illegal and void by the attempted restriction to door-to-door serv-

ice because many passengers go to stations maintained by plaintiff, which are within the towns and villages served by plaintiff and the order of September 2, 1941 makes no [fol. 12] provision for such passengers.

21. That the order of September 2, 1941 is incorrect, illegal and void by the restriction of the plaintiff to the use of irregular routes and that the same is contrary to the statute and the geographical conditions in the area in which operations are conducted.

22. Upon information and belief that the order of September 2, 1941 in allegedly describing the rights granted as "special operations" is arbitrary and illegal and such words "special operations" are meaningless, inapplicable, and improper in the within proceeding as the words "special operations" are vague, uncertain and ambiguous, and prejudice the rights of the plaintiff by subjecting it to whatever future construction may be placed thereon by the Commission as no present and proper purpose is supplied by such terminology nor is there any factual basis or finding to support same.

23. Plaintiff respectfully shows unto this Court that the said order of the Interstate Commerce Commission hereinabove mentioned dated September 2, 1941, and the order denying reconsideration thereof are as a matter of law, and fact, illegal and unlawful in that the said Commission acted arbitrarily, illegally and without any evidence to support same, and that the Commission acted in excess of its statutory authority; that said orders as aforesaid are not sustained by any findings, or by any evidence; and are contrary to the terms and provisions of the Motor Carrier Act of 1935; that said orders deprive the plaintiff of its rights to a certificate as set forth in the order of the Commission dated June 20, 1938, and the order of September 2, 1941 and the orders of March 17, 1942 and July 13, 1942 denying reconsideration or a hearing herein, take and deprive the [fol. 13] plaintiff of its property without due process of law and in violation of the Fifth Amendment to the Constitution of the United States and are illegal and void.

24. That plaintiff will suffer irreparable injury and financial loss if it is compelled to transport only six adult paying passengers in a vehicle at one time.

Wherefore it is respectfully prayed:

(a) That process be issued against the defendants;

(b) That the order of September 2, 1941 be vacated, annulled and set aside as contrary to law and its enforcement enjoined and the order of June 20, 1938 be reinstated and that a certificate be issued to plaintiff in accordance with the said order of June 20, 1938;

(c) That in the alternative, that the order of September 2, 1941 be vacated, annulled and set aside as contrary to law and fact, and that the matter be remanded to the Interstate Commerce Commission for hearing and proof with respect to the issues herein, or that hearings be conducted by this Court with respect to such issues;

(d) That a temporary injunction should be issued if the same shall be necessary.

(e) That the plaintiff may have such other and further relief as the facts shown and to be shown may require.

George H. Rosen, Attorney for Plaintiff, Office & P. O. Address, 302 Broadway, Borough of Manhattan, New York City.

[fol. 14] Exhibit "A" to Amended Complaint

C-2 Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 2nd day of September, A. D. 1941.

No. MC 78980

Application of Crescent Express Lines, Inc., New York, New York

This proceeding coming on for further consideration:

It appearing, That a previous order having been entered in this proceeding authorizing the issuance of a certificate of public convenience and necessity upon compliance with the terms of the said order; that protests or exceptions to said order having been duly filed; and further consideration having been had;

It further appearing, That applicant or predecessor in interest was, on June 1, 1935, and continuously since has been, in bona fide operation as a common carrier by motor

vehicle in interstate or foreign commerce according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the Interstate Commerce Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public,* and upon filing appropriate publications providing for the cancellation of any effective rates or charges applying to transportation service in excess of that herein or otherwise lawfully authorized, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order,* unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order,* then said applicant shall show cause, if any there be, *within 60 days from the date of this order,* why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

[fol. 15] *It is further ordered,* That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order* a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission.

And it is further ordered, That the previous order issued in this proceeding, describing the authority to which applicant has been found to be entitled, upon compliance with

the requirements therein specified, be, and it is hereby, vacated and set aside.

By the Commission, division 5.

(Seal.) W. P. Bartel, Secretary.

Appendix to the order of the Interstate Commerce Commission, Division 5, dated the 2nd day of September, A. D. 1941.

No. MC 78980

Application of Crescent Express Lines, Inc., New York, New York

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than six passengers in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during the season extending from June 1 to October 1, inclusive, over irregular routes, is as specified below:

Between New York, N. Y., on the one hand, and, on the other, points and places in Sullivan County, N. Y., and the Townships of Hardenbergh, Denning, Rochester, Warwarsing, Gardiner, and Shawangunk, Ulster County, N. Y., traversing New Jersey for operating convenience only.

[fol. 16] Exhibit "B" to Amended Complaint

Order ID-142

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 17th day of March, A. D. 1942.

No. MC 78980

Application of Crescent Express Lines, Inc., New York New York

This proceeding coming on for further consideration:

It appearing, That a petition has been filed by applicant objecting to the order of September 2, 1941, issued herein;

and further consideration having been had, and good cause appearing therefor;

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission, division 5.

(Seal.) W. P. Bartel, Secretary.

[fol. 17] EXHIBIT "C" TO AMENDED COMPLAINT

Order ID-142

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of July, A. D., 1942.

No. MC 78980

CRESCENT EXPRESS LINES, INC., NEW YORK, NEW YORK

Upon consideration of the record in the above-entitled proceeding and petition filed by applicant against the order issued March 17, 1942; and good cause appearing therefor;

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission, W. P. Bartel, Secretary. (Seal.)

[fol. 18] EXHIBIT "D" TO AMENDED COMPLAINT

Order C-2

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 20th Day of June, A. D. 1938

No. MC-78980

Application of HERMAN TREVAX, JACOB VANGROFSKY, MURRAY GALLEY and MORRIS GLICKMAN, A Partnership, Doing Business as Crescent Mountain Service, Bronx, New York.

After due investigation:

It appearing, That applicant in accordance with the requirements of Section 206, Motor Carrier Act, 1935, includ-

ing due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto,* and made a part of this order, and that the said applicant or predecessor in interest was in bona fide operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public,* a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto,* and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby denied, *and that on and after 30 days from date of this order,* unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order,* then said applicant shall show cause, if any there be, *within 60 days from the date of this order,* why said application should not be dismissed, failing in which the said application shall be dismissed without further proceeding.

It is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order,* a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission.

[fols. 19-21] *And it is further ordered,* That the previous order issued in this proceeding, describing the authority to which applicant has been found to be entitled, upon compli-

ance with the requirements therein specified, be and it is hereby, vacated and set aside.

By the Commission, division 5. W. P. Bartel, Secretary. (Seal.)

Appendix to the order of the

Interstate Commerce Commission, Division 5, dated the

20th day of June, A. D. 1938

No. MC 78980

Application of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a Partnership, Doing Business as Crescent Mountain Service, Bronx, New York

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, over the regular route, between fixed termini, and to and from intermediate and off-route points, during the season extending from the 1st of June to the 1st of October, inclusive, is as specified below:

Between New York, N. Y., and Woodbourne, N. Y.:

From New York over George Washington Bridge to Fort Lee, N. J., thence over New Jersey Highway 4 to Bergenfield, N. J., thence over New Jersey Highway 2 to the New Jersey-New York State line, thence over New York Highway 17 to Monticello, N. Y., and thence over New York Highway 42 to Woodbourne, and return over the same route.

Intermediate and off-route points within 20 miles of Woodbourne.

[File endorsement omitted.]

[fol. 22] In District Court of the United States

[Title omitted]

Answer of Interstate Commerce Commission to Amended Complaint—Filed Dec. 15, 1942

The Interstate Commerce Commission, one of the defend-

ants in the above-entitled cause, for answer to the amended complaint, answers and says:

I

The Commission adopts the allegations of paragraphs VII and X of its answer to the original complaint, as its answer to the allegations of paragraphs 10 and 14 of the amended complaint.

II

Answering the allegations of paragraph 21 of the complaint as amended, the Commission denies the same.

III

Answering the allegations of paragraphs 22, 23 and 24 of the amended complaint, the Commission denies the same.

[fol. 23] Interstate Commerce Commission, by E. M. Reidy, Assistant Chief Counsel.

Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Wm. J. Patterson. Jurat omitted in printing.

[fol. 24] In the District Court of the United States

[Title omitted]

Answer of Interstate Commerce Commission—Filed Nov. 12, 1942

The Interstate Commerce Commission, one of the defendants in the above-entitled case, for answer to the complaint, answers and says:

I

Answering paragraphs 1 to 4, inclusive, of the complaint, the Commission admits, for the purposes of this suit, the truth of the allegations thereof.

II

Answering paragraph 5 of the complaint, the Commission denies the allegations thereof to the extent that they are

inconsistent with statements and conclusions contained in its order of September 2, 1941, attached to and made a part of the bill of complaint as Exhibit "A", to which reference is hereby made.

III

Answering paragraph 6 of the complaint, the Commission denies the allegations thereof.

[fol. 25]

IV

Answering paragraph 7 of the complaint, the Commission admits the allegations therein contained.

V

Answering paragraph 8 of the complaint, the Commission admits that it permitted substitution of plaintiff for plaintiff's predecessors-in-interest as entitled to whatever operating rights said predecessors-in-interest were found by the Commission to possess. The Commission avers that said plaintiff appears to be merely the corporate identity of individuals named in the original application.

VI

Answering paragraph 9 of the complaint, the Commission admits the issuance by it of the order of June 20, 1938, referred to in said paragraph. In this connection, the Commission alleges that said order never became effective because of protests filed immediately by competing carriers, following the receipt of which the Commission, on its own motion, referred the case back to its field force for further investigation to the end that the Interstate Commerce Commission should not issue a certificate for a type of operation not conducted by plaintiff's predecessors on and prior to the grandfather date.

VII

Answering the allegations of paragraph 10 of the complaint, the Commission admits the issuance by it of the order of September 2, 1941, referred to in said paragraph. The Commission denies such action was "without any further evidence or hearing", and alleges that by the order of September 2, 1941, plaintiff secured operating rights

[fol. 26] similar to those sought for in the applications of its predecessors and like those alleged by plaintiff's predecessors to have been conducted on and prior to June 1, 1935, the grandfather date.

VIII

Answering paragraphs 11 and 12 of the complaint, the Commission admits the allegations thereof.

IX

Answering the allegations of paragraph 13 of the complaint, the Commission denies the same, and alleges that plaintiff and/or its predecessors asked for and proved at an informal hearing, rights to operate in a territorial service, which was a flexible service, rendered in 7-passenger sedans, essentially a door-to-door service in character, and not a service over regular routes and between fixed termini.

X

Answering the allegations contained in paragraphs 14 and 15 of the complaint, the Commission denies the same. In this connection, the Commission alleges that it performed its statutory obligations under Section 208A, which require it to specify in its grant of Grandfather operating rights the same type of service conducted by the applicant on the Grandfather date in order to preserve substantial parity between the Grandfather operations and those operations authorized by the Commission's order, and further alleges that each item contained in the specification or description of the type of service in the order of September 2, 1941 constitutes an essential, integral and necessary part of such specification in order to fully and adequately comply with the statutory mandate.

[fol. 27]

XI

Answering the allegations contained in paragraph 16 of the complaint, the Commission denies the same.

XII

Answering the allegations contained in paragraph 17 of the complaint, the Commission admits the same.

XIII

Answering the allegations contained in paragraph 18 of the complaint, the Commission, for the purpose of this suit, admits that the distance from New York City to Monticello is 95 miles. Answering the other allegations of the paragraph, the Commission alleges that plaintiff misconstrues that part of the Commission's specifications, and that there is nothing to prevent a child paying a fare from occupying one of the six seats, and alleges that the provision concerning children was incorporated so as not to prohibit small children from sitting on their parents' laps in making the journey.

XIV

Answering the allegations contained in paragraph 19 of the complaint, the Commission denies the same. In this connection, the Commission alleges that the operating authority granted by the Commission in its order of September 2, 1941 is similar to that sought and proved by plaintiff's predecessors as having been operated on the Grandfather date.

XV

Answering the allegations of paragraph 20 of the complaint, the Commission denies the same.

[fol. 28]

XVI

Answering the allegations of paragraph 21 of the complaint, the Commission denies the same, and alleges that by reason of the type of operations proven by plaintiff's predecessors no certificate other than a certificate for special operations could be authorized by reason of the provisions of Section 206a of the Act.

XVII

Answering the allegations of paragraphs 22 and 23 of the complaint, the Commission denies the same. The Commission denies that its order is void for reasons set forth in said paragraphs, or for any other reason. The Commission further denies that plaintiff will suffer irreparable injury and financial loss if it is compelled to transport only six adult paying passengers in a vehicle at one time.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in its order of September 2, 1941, hereinbefore referred to.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, By E. M. Reidy, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fols. 29-30] *Duly sworn to by Wm. J. Patterson; jurat omitted in printing.*

[fol. 31] In District Court of United States

[Title omitted]

Answer of the United States to Amended Complaint

Now comes the United States and for answer to the amended complaint herein says:

1. In answer to paragraphs 1 through 20 of the amended complaint, adopts by reference paragraphs Nos. I through XV of the answer of the Interstate Commerce Commission, dated November 11, 1942, to the original complaint.

2. Denies the allegations of paragraphs 21 through 24 of the amended complaint.

Wherefore, it is respectfully requested that the amended complaint be dismissed.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C. Thurman Arnold, Assistant Attorney General.

[fol. 32] I hereby certify that copies of the foregoing answ[illegible]ve this day been served upon the following parties by m[illegible]:

Edward M. Reidy, Esq., Assistant Chief Counsel, Interstate Commerce Commission, Washington, D. C.

George H. Rosen, Esq., 302 Broadway, New York, New York.

James F. X. O'Brien, Esq., 17 Academy Street, Newark, New Jersey.

Henry P. Goldstein, Esq., 1450 Broadway, New York, New York.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

December 2, 1942.

[fol. 33] In United States District Court

[Title omitted]

Answer of Intervenor to Amended Complaint—Filed December 24, 1942

Comes now intervenor, Mountain Transit Corporation, by Henry P. Goldstein, its attorney, and in answer to the amended complaint herein alleges as follows:

I

Admits each and every allegation of the complaint herein marked, "1", "2", "3", "4", "7", "8" and "12".

II

Denies each and every allegation of the complaint herein marked, "5", "13", "14", "15", "16", "18", "19", "20", "21", "22", "23" and "24".

III

Denies any knowledge or information sufficient to form a belief as to the allegations of the complaint herein marked "17".

IV

Denies each and every allegation of the complaint herein marked "6" except that it admits that on June 1, 1935, and up until May 1941, plaintiff's predecessor has conducted the business of transportation of passengers for hire as a common carrier by motor vehicle within the purview of the Motor Carrier Act of 1935 to the extent and in

the manner described in the order of the Interstate Com-
[fol. 34] merce Commission dated September 2, 1941, and referred to in the complaint as Exhibit A.

V

Denies each and every allegation of the complaint herein marked "9" except that it admits that on or about June 20, 1938, the Interstate Commerce Commission issued an order directing that upon full compliance with the requirements of Sections 215, 216 and 217 and the rules and regulations prescribed by the Commission thereunder, that a certificate be issued, "unless otherwise ordered," authorizing the plaintiff herein to engage in interstate or foreign commerce as a common carrier according to the specification set forth as appended on the reverse side of said order, and that said order further directed, "any other party in interest who desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission within 30 days from the date of this order a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission." That parties protestant in the proceedings before the Commission filed timely Exceptions to the order and subsequently the Commission set aside said order.

VI

Denies each and every allegation of the complaint herein marked "10" except that it admits that on or about September 2, 1941, the Commission made its order, Exhibit A, wherein it directed, amongst other things, "That the previous order issued in this proceeding describing the authority to which applicant has been found to be entitled upon compliance with the requirements therein specified be and it is hereby vacated and set aside."
[fol. 35] That the order of September 2, 1941, marked Exhibit A in the complaint, was issued as the result of proceedings before this Commission as described in paragraph "V" of the answer herein and more specifically as follows:

(a) Filing of Exceptions to and Petition to Stay Issuance of Certificate by protestants, Yelloway Transportation

Corporation, Eastern Capitol Lines Inc., and Flying Eagle Coach Corporation (predecessors to Mountain Transit Corporation, intervenor herein) to the order of June 20, 1938, Exhibit D in the complaint.

(b) Submission to the Commission in informal proceedings of evidence, data, and affidavits in support of the application pending before the Commission by the plaintiff's predecessors, at which times the applicant was afforded informal hearings in the presence of Protestant's representatives.

(c) Such other proceedings as appear in the record.

VII

Denies each and every allegation of the complaint herein marked "II" except that it admits that on or about October 9, 1941, the plaintiff herein, as successor to the original applicant, filed, "Protest of Crescent Express Lines, Inc. and Petition to Stay Issuance of Certificate in the within matter," wherein it was prayed, amongst other other things, that the said compliance order, dated September 2, 1941, should be vacated and set aside and the compliance order of June 20, 1938, reinstated. No request or demand was made therein for formal hearing or any opportunity to submit additional evidence or data.

That Hudson Transit Lines on or about October 18, 1941, and Mountain Transit Corporation on or about October 16, 1941, as protestants therein, filed their respective replies to said protest and petition, and that on March 17, [fol. 36] 1942, after deliberation and consideration, the Commission made its order wherein it stated, amongst other things, "this proceeding coming on for further consideration" and therein denied plaintiff's petition. (Exhibit B of complaint).

Wherefore, it is respectfully prayed that the prayer for relief in all respects be denied and that the conrplaint herein be dismissed.

Henry P. Goldstein, Attorney for Intervenor Defendant, Office & P. O. Address, 1450 Broadway, Borough of Manhattan, City of New York.

[fols. 37-39] [File endorsement omitted.]

Duly sworn to by Theodore J. Richmond; jurat omitted in printing.

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION TO INTERVENE—Filed November 16, 1942

To George H. Rosen, Attorney for Plaintiff, and E. M. Reidy, Assistant Chief Counsel and Attorney for Interstate Commerce Commission, Defendant, and Robert L. Pierce, Special Assistant to the Attorney General and Attorney for Defendant, United States of America.

SIRS:

Please Take Notice that Hudson Transit Lines, Inc., through its attorney, the undersigned, will apply to this Court on the tenth day of November, 1942, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the United States Court House, Foley Square, in the Borough of Manhattan, and City of New York, New York, for leave to intervene as a defendant in the above entitled action pursuant to the provisions of the United States Code, Title 28, Section 45A, in order to assert the defenses set forth in its proposed Answer, copy of which is annexed hereto, and in support of such motion urges that Hudson [fol. 41] Transit Lines, Inc. is a corporation engaged pursuant to the laws of the United States and the rules and regulations of the Interstate Commerce Commission in the business of carrying passengers, etc. for hire as a common carrier, and that the operations of the plaintiff herein are competitive in part of the same territory served by said Hudson Transit Lines, Inc., which has a substantial interest in the subject matter of this action, and further that said Hudson Transit Lines, Inc. was a party in interest to the proceedings before the defendant, Interstate Commerce Commission, which resulted in the order which the plaintiff, by this action, seeks to have annulled and set aside, and in connection with which they seek to enjoin enforcement of said order.

Dated: October 30, 1942.

James F. X. O'Brien, 17 Academy Street, Newark, New Jersey. Attorney for Hudson Transit Lines, Inc.

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERVENOR, HUDSON TRANSIT LINES, INC.—Filed November 16, 1942

Hudson Transit Lines, Inc., a corporation, intervenor in the above entitled action, respectfully answers the complaint filed therein as follows:

1. It admits the allegations contained in Paragraphs 1, 2, 3 and 4 of the complaint.

2. It denies the allegations contained in Paragraph 5 of the complaint except that it admits plaintiff did, on or about June 1, 1935, conduct special irregular route radial operations with seven passenger sedans, conducting a type of operation of an interstate livery character, and that plaintiff continued said operations seasonally until the 1940 summer season, after which time plaintiff abandoned said operations and thereafter conducted occasional and sporadic operations during the summer seasonal period of a totally different character, to wit, a regular route operation between fixed termini operated with large buses.

3. It denies the allegations contained in Paragraph 6 of the complaint.

[fol. 43] 4. It admits the allegations contained in Paragraph 7 of the complaint.

5. It denies the allegations contained in Paragraph 8 of the complaint except that it admits there is some record of a sale and transfer from the partnership doing business under the names, Crescent Cadillac Lines and Crescent Mountain Lines, and Crescent Express Lines, to a corporation known as Crescent Express Lines, Inc., and which last mentioned corporation had as its president one Max Eranger, whom the transfer alleged to have been employed as dispatcher and general manager in the transportation business since 1925.

In connection with said transfer, this answering defendant alleges that such transfer was merely one of the steps taken in connection with a plan of Mohawk Lines, Inc., which is controlled by one Benjamin Casser and associates, to get control of Crescent Express Lines, Inc. in their endeavor to

secure an attempted justification for the continuance of regular route bus operations between fixed termini in line with previous attempts made by this same group in connection with Royal Cadillac Service, Inc. and Reliable Cadillac Lines, Inc., and Albert Barber.

This answering defendant further alleges that said Mohawk Lines did file application to control Crescent Express Lines, but when confronted with opposition at the hearing refused to proceed and petitioned for dismissal of the application for control without prejudice, which petition was granted to the extent that the application was dismissed, but not dismissed without prejudice.

[fol. 44] This answering defendant further alleges that said group has, since the spring of 1941, controlled plaintiff contrary to the law and the regulations of the Interstate Commerce Commission, and has conducted plaintiff's operations not according to the authority permitted by the Interstate Commerce Commission, nor along the lines, or of the same type as plaintiff's Grandfather operations, but on the contrary has conducted them illegally as regular route bus operations between fixed termini, without ever having authority from the Interstate Commerce Commission for such operations, and meanwhile abandoned all operations of the Grandfather type.

For these reasons, this defendant denies that plaintiff is entitled to the claimed operating rights.

6. It denies the allegations contained in Paragraph 9 of the complaint, except that it admits that on or about June 30, 1938 the Interstate Commerce Commission issued an order directing that certain operating rights be granted to plaintiff's predecessors, but alleges that the said order never became effective because of protests immediately made by this defendant and other protesting carriers, which protests the Commission immediately recognized to be valid protests, so that the Commission, after receipt of same, on its own motion, referred the case back to the field for further investigation to the end that the Commission should not issue a certificate for a type of operation not conducted by plaintiff's predecessors on and prior to the Grandfather date.

[fol. 45] 7. It denies the allegations set forth in Paragraph 10, and alleges that plaintiff's predecessors never got any rights granted by the order of June 20, 1938, and admits

that the said order of September 2, 1941 was issued by which plaintiff got operating rights exactly like those sought for in the application of its predecessors and like those alleged by plaintiff's predecessors to have been conducted on and prior to the Grandfather date, June 1, 1935.

8. It admits the allegations contained in Paragraphs 11 and 12 of the complaint.

9. It denies the allegations contained in Paragraph 13 of the complaint.

10. It denies the allegations contained in Paragraph 14 of the complaint, and alleges that the Interstate Commerce Commission performed its statutory obligations under Section 208A, which require it to specify in its grant of Grandfather operating rights the same type of service conducted by the applicant on the Grandfather date in order to preserve substantial parity between the Grandfather operations and those operations authorized by the Commission's order, and further alleges that each item contained in the specification or description of the type of service in the order of September 2, 1941 constitutes an essential, integral and necessary part of such specification in order to fully and adequately comply with the statutory mandate.

11. It denies the allegations contained in Paragraph 15 of the complaint and alleges that the specification contained in the description of plaintiff's Grandfather type of service, to wit, the transportation of not more than six passengers in any one vehicle, was a necessary and integral part of the type of service conducted by plaintiff's predecessors on the Grandfather date in order to provide the flexible livery type service not possible with a larger vehicle, and that in so including such specification, the Commission was merely [fol. 46] complying with the statutory mandate contained in Section 208A of the Act requiring it to specify the service to be rendered.

12. It denies the allegations contained in Paragraph 16 of the complaint.

13. It has no knowledge of the allegations contained in Paragraph 17 of the complaint, and therefore neither affirms nor denies the same but leaves plaintiff to its proper proof.

14. It denies the allegations contained in Paragraph 18 of the complaint and alleges that plaintiff is misconstruing

that part of the Commission's specifications, and that there is nothing to prevent a child paying a fare from occupying one of the six seats, and alleges that the provision concerning children was incorporated so as not to prohibit small children from sitting on their parents' laps in making the journey.

15. It denies the allegations contained in Paragraph 19 of the complaint, and alleges that the operating authority granted by the Commission in its order of September 2, 1941 is similar to that sought and proved by plaintiff's predecessors as having been operated on the Grandfather date.

16. It denies the allegations contained in Paragraph 20 of the complaint.

17. It denies the allegations contained in Paragraph 21 of the complaint, and alleges that by reason of the type of operations proven by plaintiff's predecessors not certificate other than a certificate for special operations could be authorized by reason of the provisions of Section 207A of the Act.

[fols. 47-48] 18. It denies the allegations contained in Paragraphs 22 and 23 of the complaint.

19. It alleges that plaintiff and its predecessors have been given fair hearing on fact and law by the Interstate Commerce Commission, and that the findings and conclusions as contained and implied in the Commission's order of September 2, 1941 are fully supported and justified by the proof and evidence submitted by the plaintiff's predecessors, and that in reaching the conclusions contained in its said order the Commission considered and weighed carefully in the light of its knowledge and experience the facts circumstances and conditions existing in connection with the case, to which was applied the pertinent law as laid down by the Commission and courts of this land, and further alleges that the said order was not made arbitrarily or unjustly or without proof, and that the Commission did not exceed the authority conferred upon it by law in making said order.

Dated: October 30, 1942.

James F. X. O'Brien, 17 Academy Street, Newark, New Jersey; Attorney for Hudson Transit Lines, Inc.

[fol.49] In United States District Court, Southern District of New York

Civil Action. No. 19-339

Crescent Express Lines, Inc., Plaintiff,

against

United States of America and Interstate Commerce Commission, Defendants,

and

Hudson Transit Lines, Inc., and Mountain Transit Corporation, Intervenors

Before L. Hand, Circuit Judge and Caffey and Hulbert, District Judges.

Decree—February 27, 1943

This cause came on to be heard at the January, 1943, term of this court, and was argued by counsel, and thereupon upon consideration thereof, it is

Ordered, Adjudged and Decreed, that the amended complaint herein be, and the same hereby is dismissed upon the merits with costs.

Dated, February 27th, 1943.

Learned Hand, United States Circuit Judge; Francis G. Caffey, United States District Judge; Hulbert, United States District Judge.

[fol. 50] In United States District Court, Southern District of New York

Civil Action. No. 19-339

Crescent Express Lines, Inc., Plaintiff,

against

United States of America and Interstate Commerce Commission, Defendants,

and

Hudson Transit Lines, Inc., and Mountain Transit Corporation, Intervenors

Findings of Fact and Conclusions of Law

The Court makes the following findings of fact and conclusions of law.

Findings of Fact

1. The plaintiff was carrying passengers by motor for hire on June 1, 1935, and thereafter from New York City through New Jersey to points and places in Sullivan and Ulster Counties, New York.

2. Its route was from the Borough of the Bronx over the Washington Bridge, thence by Routes 4 and 2 in New Jersey and Route 17 in New York, to Wurtsboro whence it delivered its passengers within 20 miles of Woodbourne, New York.

3. The plaintiff carried its passengers in both directions daily during the season authorized, but only in cars such as those described in the eighth finding, picking them up at their houses and dropping them at their hotels or boarding houses; and vice versa. In some cases it picked them up at an "office" at 531 East 169th Street, in the Bronx, or at a fixed station in Woodbourne.

4. That part of the route which was between New York and Wurtsboro was always over the same roads.

[fol. 51] 5. The plaintiff's operations were not upon any schedule.

6. Before changing the certificate granted on June 20, 1938, the Commission gave notice to the plaintiff of a new hearing, but it did not take any additional evidence to support the order of September 2, 1941.

7. The certificate issued on September 2, 1941 truthfully "specifies" the service rendered by the plaintiff and its predecessors as of June 1, 1935.

8. The certificate restricts the plaintiff to the use of cars, capable of carying not more than six passengers, not including the driver and children under 10 years of age who do not occupy a seat or seats.

Conclusions of Law

1. The order of September 2, 1941 was adequately supported by evidence.

2. The Commission lawfully restricted the equipment and facilities of the plaintiff in accordance with Sections 206, 207 and 208 of the Motor Carrier Act of 1935.

3. The restriction in the certificate upon plaintiff's service to non-scheduled operations was lawful; so too was the certificate's description of the authorized route as "special" and "irregular"; and the service as "door-to-door"; but the last description does not forbid the plaintiff from picking up passengers at 531 East 169th Street in the Bronx, or at any fixed station in Sullivan County, or at any other station.

4. The amended complaint should be dismissed upon the merits with costs.

Dated, February 27th, 1943.

Learned Hand, United States Circuit Judge; Francis G. Caffey, United States District Judge; Hulbert, United States District Judge.

[fol. 52] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 19-339

CRESCENT EXPRESS LINES, INC., Plaintiff,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

HUDSON TRANSIT LINES, INC., and MOUNTAIN TRANSIT CORPORATION, Intervenors.

Before: L. Hand, Circuit Judge, and Caffey and Hulbert, District Judges.

Upon final hearing before a court, convened under Sec. 47 of Title 28, U. S. Code, of an action brought under Sec. 41 (28), Title 28, U. S. Code, to set aside an order of the Interstate Commerce Commission.

George H. Rosen, for the plaintiff.

Robert L. Pierce, for the United States.

E. M. Reidy, for the Interstate Commerce Commission.

James F. X. O'Brien, for Hudson Transit Lines, Inc., Intervening.

Henry P. Goldstein, for Mountain Transit Corp., Intervening.

OPINION

L. HAND, C. J.:

This cause comes on before a court, convened under Sec. 47 of Title 28, U. S. Code, for final hearing of an action brought under Sec. 41(28) of Title 28, U. S. Code, to set aside an order of the Interstate Commerce Commission, and thus to reinstate its earlier order which the order appealed from modified. The plaintiff is a common carrier by motor, a corporation which succeeded to a partnership from which we need not distinguish it. On June 1, 1935, [fol. 53] it was operating a fleet of six sedan motor cars, each capable of seating seven persons—six passengers and the driver—between New York City, (chiefly from the Borough of Bronx), and points in Ulster and Sullivan Counties, over a route, part of which was in New Jersey. On February 12, 1936, it filed an application with the Commission under Sec. 306(a) of Title 49, U. S. Code, (the "Grandfather Clause" of the Motor Carrier Act of 1935), for a certificate authorizing it to continue this service, which on March 26, 1937, it supplemented by a more formal application, accompanied by supporting affidavits. A protest against the grant of such a certificate having been made, the case came on for hearing on November 30, 1937, at the New York district office of the Commission and proofs were taken. On May 7, 1938 the Commission entered an order, which it modified in unessential details by a second order entered on June 20, 1938, which is the order that the plaintiff wishes reinstated. This order awarded a certificate to the plaintiff which described the service to be rendered as being "over the regular route, between fixed termini, and to and from intermediate and off-route points" for four summer months "between New York, N. Y. and Woodbourne, N. Y." After specifying the route in detail the certificate concluded: "Intermediate and off-route points within 20 miles of Woodbourne." Protests against this order were at once filed by a number of bus lines and the matter was referred back to the division for further investigation. Notice of a further hearing for December 1, 1938, was given, at which however no new evidence was taken, and which the plaintiff apparently did not attend. The Commission, having before it many applications in-

volving the "Grandfather Clause", and being divided as to its meaning, withheld decision until September 2, 1941, when it superseded its certificate of June 20, 1938, and [fol. 54] granted another in the following terms:

> "The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than six passengers in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats during the season extending from June 1 to October 1, inclusive, over irregular routes, is as specified below:
>
> "Between New York, N. Y., on the one hand, and, on the other, points and places in Sullivan County, N. Y., and the Townships of Hardenberg, Denning, Rochester, Warwarsing, Gardiner, and Shawangunk, Ulster County, N. Y., traversing New Jersey for operating convenience only."

The plaintiff, which had been satisfied with the first certificate, objected to the second, and, after two petitions for rehearing had been denied, (one addressed to the division which had issued the certificate, and the other to the whole Commission), brought this action on September 30, 1942. The amended complaint alleged that the second certificate was unlawful, because it should not have limited the plaintiff in five particulars: 1.) to vehicles carrying only six passengers and the driver; 2.) to "door-to-door service"; 3.) to "irregular routes"; 4.) to "non-scheduled" service; 5.) to "special operations." In addition the complaint challenged the power of the Commission to modify the certificate of June 20, 1938, without taking further evidence, and holding another hearing. Answers having been filed, the cause came on for hearing upon the pleadings and the record of the proceedings before the Commission.

The case turns upon three sections of the Motor Carriers Act, (Secs. 306, 307 and 308 of Title 39, U. S. Code), which subject "common carriers"—as distinct from "contract carriers", (Sec. 309)—generally to the control and regulation of the Commission by requiring them to obtain certifi-

[fol. 55] cates of "public convenience and necessity", similar to those required of common carriers by rail for extensions of their lines, (Sec. 1(18), Title 49, U. S. Code). The proviso to Sec. 308(a), upon which the plaintiff must rely for the scope which it claims for its certificate, applies to all certificates granted to "common carriers" under Sec. 307(a), whether under the "Grandfather Clause", or otherwise; and it will be clearer to consider the Commission's powers as a whole before taking up that clause itself. After giving general superintendence over the subject-matter to the Commission by Sec. 306(a), Congress in Sec. 307(a) directed it to issue certificates, when these are "required by the present or future public convenience and necessity." The section concludes with a proviso which limits such certificates, in the case of passenger carriers, to " ular * * * routes, and between fixed termini, exc as such carriers may be authorized to engage in special or charter operations." Section 308(a) defines what shall be the contents of such certificates: they must "specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in the case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate." (We interpret special * * * operations" in the proviso to Sec. 307(a), as meaning the same thing as "operations not over specified routes," just quoted from Sec. 308(a): i. e. operations within a defined territory not upon regular routes, or between fixed termini). Finally, Section 308(a) makes "the exercise of the privileges granted" by a certificate subject, both at its issue and at any later time, to "such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require."

[fol. 56] Thus it appears, not only because the certificate is to "specify the service to be rendered" as well as the routes over which it shall be rendered, but also because that service is to be always subject to regulation in the interests of the public, that Sec. 308(a)—unless because of its proviso—, leaves complete regulatory power in the Commission's hands. That proviso does, however, set a limit upon its power, and the result at bar depends upon what that is. It declares that none of the "terms, conditions, or

limitations shall restrict the right of the carrier to add to his or its equipment and facilities * * * as the development of the business and the demands of the public shall require." The parties at bar appear to assume that this is more than merely a direction for the guidance of the Commission; and that, ex proprio vigore, it gives the carrier the privilege without recourse to the Commission of adding to his service as he may find it desirable to do so. That is indeed probably its true meaning; in any event we shall assume so for the purpose of this case, for in any event it must be read quantitatively. As we have already observed, the Commission must not only prescribe the route over which the carrier shall operate, but it must also "specify the service to be rendered." No one suggests that the proviso to Sec. 308(a) authorizes the carrier to change the prescribed route, and there is as little reason for saying that it justifies a change in the service to be rendered. Unless that feature of the certificate is to become a dead letter, and the Commission is to be stripped of all power except to fix routes, the carrier cannot have power substantially to modify the quality of his service, however free he may be to "add" to it in amount; and certainly nothing can more directly touch the quality of transportation than the cars in which passengers are carried. Indeed, limitation as to the quality of the service was inevitable in the public interest: a line of light small passenger cars—like [fol. 57] those here at bar—may be desirable however numerous, over routes upon which a fleet of powerful, heavy, commodious, motor busses, capable of seating forty or fifty passengers, and weighing perhaps ten tons, would be wholly unsuitable.

The proviso in Sec. 306(a)—the "Grandfather Clause"—was apparently inserted to avoid the hardship which would result from forcing a carrier to justify his existing business in terms of public convenience. It was meant to accept the motor vehicle system as it was; it recognized as vested such rights as had grown up before Congress asserted any public interest in motor transportation; and consistently, the rights protected should be measured by past user. Strictly, it was therefore an anomaly to give carriers who secured certificates under the "Grandfather Clause", the privilege of indefinite quantative expansion. The only reason for dispensing with the Commission's supervision—i. e. the injustice involved in stopping a business which had

grown up in reliance upon the failure of Congress to act—ceased with the protection of the business as it stood when regulation began; and possibly Congress did not realize that it was going as far as it did. Be that as it may, if the holders of such certificates have the same unlimited power to change the quality of their service as they had to add to its quantity, Congress, in an effort to prevent the unduly harsh impact of a new system, created a favored group of carriers, substantially free from all regulation over those routes on which they may have chanced to operate on June 1, 1935. So far at least, it is safe to say that Congress did not mean to go.

It follows from what we have just said that all those limitations of which the plaintiff complains were properly imposed upon its certificate, for all served to "specify the service to be rendered". There can be no debate about the first, which confines the service to cars holding only seven [fol. 58] persons. The second, describing the business as a "door-to-door service", is not to be understood as preventing the plaintiff from picking up passengers either at No. 531 East 169th Street in the Bronx—said to be its New York "office"—or at any fixed place in the village of Woodbourne or elsewhere; and when so understood, the description is accurate, for it does do a "door-to-door" business. The Commission is certainly not limited to the exact words of the statute; it could not properly "specify" the service at all, if it were. Third: it was also proper to describe the route as "irregular". A "regular" route means one which has only "fixed termini", not one which always traverses the same roads for part of its route. The fact that the plaintiff picks up and sets down its passengers at places of their own choosing make its whole route "irregular". Its professed fear that its privilege of passing over the same roads between the Bronx and Wurtsboro may be forfeited is altogether fanciful. Fourth: the service was properly described as "non-scheduled", for such it is; if the plaintiff wishes to run on a schedule, it must apply to the Commission for a change. Fifth: the operation was "special" for that word—borrowed from the proviso in Sec. 307(a)—is used, as we have already indicated, in contrast with a "regular" route "between fixed termini".

Finally, we can see nothing improper in the procedure adopted by the Commission in changing its decision: it acted upon the same record and after notice to the plaintiff

of a new hearing. True, the interval between the orders were long; but the whole subject was new and confused, and the Commission itself was divided in opinion. The plaintiff was deprived of no right, substantial or procedural, and indeed does not even now allege that any other evidence would have changed the result.

[fols. 59-63] The amended complaint will therefore be dismissed; findings and a judgment are filed herewith.

Complaint dismissed.

[fol. 64] In United States District Court

[Title omitted]

Order Allowing Appeal from the District Court to the Supreme Court—Filed April 16, 1943

The Petition of Crescent Express Lines, Inc., the above named plaintiff for an appeal from the Decree and Judgment dated February 27, 1943 and entered in the above entitled action on the 6th day of March, 1943, to the Supreme Court of the United States is hereby granted, and the appeal is hereby allowed upon the petitioner giving bond for costs as required by law in the sum of Two Hundred and Fifty ($250.00) dollars.

Dated: April 16th, 1943.

Hulbert, United States District Judge.

[fol. 65] In United States District Court

[Title omitted]

Petition for Appeal

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

Crescent Express Lines, Inc., feeling itself aggrieved by the Decree and Judgment dated February 27, 1943 and entered by this Court on March 6, 1943 prays an appeal from said Decree and Judgment to the Supreme Court of the United States in accordance with the statutory requirements.

The particulars wherein plaintiff considers the decree erroneous are stated in the Assignment of Errors,

which accompanies this petition and to which reference is hereby made. Said plaintiff prays that a transcript of the record, proceedings and papers upon which said judgment was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Dated: April 16, 1943.

George H. Rosen, Attorney for Plaintiff, Office & P. O. Address, 302 Broadway, Borough of Manhattan, New York City.

[fol. 66] In United States District Court

[Title omitted]

Assignment of Errors

The above named plaintiff files with the Clerk of the above entitled District Court with its petition for appeal in the above entitled action, the following assignment of errors upon which it will rely upon the prosecution of the appeal petitioned for in said action as set forth in its petition for appeal:

1. The Court erred in making Finding of Fact numbered "6" insofar as it states that the Commission gave notice to the plaintiff of a new hearing in the absence of evidence of what said new alleged hearing consisted of and in the absence of any evidence being given in opposition to the order of June 20, 1938.

2. The Court erred in making Finding of Fact numbered "7" that the certificate issued on September 2, 1941 truthfully "specifies" the service rendered by the plaintiff and its predecessors as of June 1, 1935.

3. The Court erred in making Finding of Fact numbered "8" in finding that the certificate restricts the plaintiff to the use of cars capable of carrying not more than six passengers not including the driver and children under 10 [fols. 67-68] years of age who do not occupy a seat or seats.

4. The Court erred in making Conclusion of Law numbered "1" that the order of September 2, 1941 was adequately supported by evidence.

5. The Court erred in making Conclusion of Law numbered "2" that the Commission lawfully restricted the

equipment and facilities of the plaintiff in accordance with Sections 206, 207 and 208 of the Motor Carrier Act of 1935.

6. The Court erred in making Conclusion of Law numbered "3" that the restrictions in the certificate upon the plaintiff's services to non-scheduled operations, the authorized route as "special and irregular" and the service as "door-to-door," were lawful.

7. The Court erred in making Conclusion of Law numbered "4" in dismissing the amended complaint upon the merits with costs.

8. The Court erred in making the Decree and Judgment herein in that the same is contrary to law, contrary to the evidence and contrary to the Findings of Fact and Conclusions of Law.

Wherefore, plaintiff prays that the Decree and Judgment of the said District Court be reversed and that the order of the Interstate Commerce Commission dated September 2, 1941 be vacated and set aside and the order of the Interstate Commerce Commision dated June 20, 1938 be reinstated and for such other, further and different relief as may be just and proper in the premises.

George H. Rosen, Attorney for Plaintiff, Office & P. O. Address, 302 Broadway, Borough of Manhattan, New York City.

[fol. 69] In United States District Court

[Title omitted]

Notice of Appeal

To the United States of America and the Interstate Commerce Commission, Defendants, and Hudson Transit Lines, Inc., and Mountain Transit Corporation, Intervenors:

Please Take Notice, that, pursuant to the statutes and rules of court in such case made and provided, Crescent Express Lines, Inc., does hereby appeal to the Supreme Court of the United States from the Decree and Judgment of the District Court of the United States for the Southern District of New York made on the 27th day of February, 1943 and filed on the 6th day of March, 1943 in the office of the Clerk of said Court, which dismissed the amended complaint of said plaintiff, and does hereby ap-

peal from each and every part of said Decree and Judgment as well as from the whole thereof.

Attached hereto is a copy of the Petition for Appeal, the order allowing the appeal, the assignment of errors, and the Statement as to Jurisdiction. Your attention is further directed to the provisions of Rule 12 of the Rules of the [fol. 70] Supreme Court of the United States, paragraphs 2 and 3 as follows:

> "2. If the appeal is allowed, the appellant shall serve the appellee within 5 days after such allowance (a) a copy of the petition for and order allowing the appeal, together with a copy of the assignments of error and of the statement required by paragraph 1 of this rule, and (b) a statement directing attention to the provisions of paragraph 3 of this rule. Proof of service of the papers required by this paragraph to be served shall be filed forthwith with the clerk of the court possessed of the record, and shall be incorporated by him in the transcript of record prepared for this court upon the appeal.
>
> "3. Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court, asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made it may be opposed as provided in Rule 7, paragraph 3."

Dated: N. Y., April 16, 1943.

Yours, etc., George H. Rosen, Attorney for Plaintiff, Office & P. O. Address, 302 Broadway, Borough of Manhattan, New York City.

[fol. 71] In United States District Court

[Title omitted]

Notice to the Attorney General of the State of New York

To the Honorable Nathaniel L. Goldstein, Attorney General of the State of New York:

Pursuant to Section 210 of the Judicial Code, 38 Stat. 220, U. S. C. A., Title 28, Section 47 (a) you are hereby

notified that plaintiff in the above entitled cause has taken an appeal to the Supreme Court of the United States from the final decree of the District Court of the United States for the Southern District of New York, dated February 27, 1943 and filed in the office of the Clerk of said Court on March 6, 1943, and the order allowing the appeal makes the same returnable within forty days from the date thereof.

Dated: April 16th, 1943.

George H. Rosen, Attorney for Plaintiff, Office & P. O. Address, 302 Broadway, Borough of Manhattan, New York City.

[Stamp:] Copy of within paper received April 21, 1943. Department of Law, New York City Office, Nathaniel L. Goldstein, Attorney General.

[fol. 72] In United States District Court

[Title omitted]

Affidavit of Service

State of New York,
County of New York, ss.:

George H. Rosen, being duly sworn, deposes and says:

That on the 21st day of April, 1943 he served the following papers in the within matter on Nathaniel L. Goldstein, Attorney General of the State of New York, by leaving copies of said papers personally with Alfred W. Jones, Assistant Attorney General, to wit: Notice of Appeal, Petition and Order Allowing Appeal, Assignment of Errors, Statement as to Jurisdiction, Citation on Appeal, Bond for Costs; said service was made at the office of said Attorney General at 80 Centre Street, Borough of Manhattan, City, County and State of New York.

That on the 21st day of April, 1943, deponent did serve a copy of the praecipe dated April 21, 1943 to said Nathaniel L. Goldstein, Attorney General of the State of New York by mailing the same in a postpaid sealed wrapper addressed to said Nathaniel L. Goldstein, Attorney General

of the State of New York at 80 Centre Street, New York City, and depositing the same in a post office box regularly maintained by the Government of the United States at 302 Broadway, Borough of Manhattan, City and State of New [fols. 73-74] York.

George H. Rosen.

Sworn to before me this 21st day of April, 1943.
George Winter, Notary Public.

[fol. 75] In United States District Court

[Title omitted]

Affidavit of Service

State of New York,
County of New York, ss.:

Beatrice Martin, being duly sworn, deposes and says:

That she is employed in the office of George H. Rosen attorney for the plaintiff.

That on the 21st day of April, 1943, she served the following papers through the Post Office, by depositing a true and correct copy of each of said papers to wit: Notice of Appeal, Petition and Order Allowing Appeal, Bond, Assignment of Errors, Statement as to Jurisdiction, Citation and Praecipe, properly enclosed in postpaid wrappers, in the Post Office regularly maintained by the Government of the United States, at Church and Vesey Streets in the Borough of Manhattan, City of New York upon the following attorneys at their addresses indicated, which said addresses were designated by them for that purpose upon the preceding papers in this action. That deponent is over the age of 18 years and not a party to this action.

Edward M. Reidy, Esq., c/o Interstate Commerce Commission, Washington, D. C.

Robert L. Pierce, Esq., Department of Justice, Washington, D. C.

Henry P. Goldstein, Esq., 1450 Broadway, New York City.

[fol. 76] James F. X. O'Brien, Esq., 17 Academy Street, Newark, New Jersey.

Beatrice Martin.

Sworn to before me this 21st day of April, 1943.
George Winter, Notary Public.

[fols. 77-79] [Citation in usual form omitted in printing]

[fols. 80-84] [Clerk's Certificate to foregoing transcript omitted in printing.]

Form B.M.C. A.

3

ALTERNATE FORM

PROPERTY AND PASSENGER CARRIER APPLICATION

(Under "Grandfather" Clause)

(This form may be used only by Common Carriers engaged in transportation of property or passengers in interstate or foreign commerce on June 1, 1935, and by Contract Carriers so engaged on July 1, 1935, and continuously thereafter, and may be used in lieu of either B.M.C. 1 or 2, and must be filed on or before February 12, 1936.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of JACOB VANDERCOSKY (Full name)
for appropriate authority to continue to operate as a motor carrier under the Motor Carrier Act, 1935.

DOCKET NO. MC-78980 (Do not fill in)

APPLICATION

INTERSTATE COMMERCE COMMISSION
DEC 17 1936

To the Interstate Commerce Commission, Washington, D. C.

APPLICANT STATES:

Applicant's name is JACOB VANDERCOSKY

Business address 531 East 169th Street (Street and number), New York City (City)
Bronx (County), New York (State)

Applicant is a Partnership (Individual, partnership or corporation) doing business under the trade name or style of

CRESCENT MOUNTAIN SERVICE

Applicant, or its predecessor in interest, was in bona fide operation in interstate or foreign commerce as a common carrier of passengers or property by motor vehicle on June 1, 1935, or as a contract carrier by motor vehicle on July 1, 1935, and has so operated as such continuously since the applicable date, except as to interruptions of service over which the applicant or its predecessor in interest had no control, over the route or routes or within the territory as follows:

DOCKET MC-FC 14102
Substitution for or in

New York City to Monticello, Liberty, Mountaindale, Fallsburg, Woodridge, Woodbourne, Wurtsboro, Bloomingburgh, Middletown
(Describe briefly the route, routes, or territory served)

Granted 10-31-46
(Granted or Denied) (Date)

APPLICATION

INTERSTATE COMMERCE COMMISSION
DEC 12 1936

To the Interstate Commerce Commission, Washington, D. C.

APPLICANT STATES:

Applicant's name is JACOB VANGROSKY

Business address 531 East 169th Street, (Street and number) New York City (City)

Bronx (County) New York (State)

Applicant is a Partnership (Individual, partnership or corporation) doing business under the trade name or style of

CRESCENT MOUNTAIN SERVICE

Applicant, or its predecessor in interest, was in bona fide operation in interstate or foreign commerce as a common carrier of passengers or property by motor vehicle on June 1, 1935, or as a contract carrier by motor vehicle on July 1, 1935, and has so operated as such continuously since the applicable date, except as to interruptions of service over which the applicant or its predecessor in interest had no control, over the route or routes or within the territory as follows:

DOCKET MC-FC 14102
Suspension or in

New York City to Monticello, Liberty, Mountaindale, Fallsburg, (Describe briefly the route, routes, or territory served)
Woodridge, Woodbourne, Hurtsboro, Bloomingburgh, Middletown

Granted 12-31-36
(Denied) (Date)

In filing this application, Applicant agrees to furnish all of the facts, statements, data, and evidence which are required in Form B.M.C. 1 or 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

Applicant has complied with the orders of the Commission relative to the service of application on interested parties; and will submit such additional information to substantiate Applicant's prayer herein as the Commission may require.

Applicant reserves the right to claim exemption from any and all provisions of the Motor Carrier Act, 1935, and the filing of this application shall not be deemed a waiver thereof.

WHEREFORE, Applicant hereby applies to the Interstate Commerce Commission for appropriate authority to continue to operate as a motor carrier, pursuant to Section 206(a) or Section 209(a) of the Motor Carrier Act, 1935.

Dated this 11th day of February, 1936.

CRESCENT MOUNTAIN SERVICE
(Applicant)

By Jacob Vangrosky (Title) one of registered owners

(OVER)

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MATERIAL UNSUITABLE FOR MICRO-CARDING

Form B.M.C. A.

OATH

State of New York)
) ss:
County of New York)

JACOB MANGROFSKY (Name of affiant) makes oath and says that he is the one of registered owners and partner (Title of affiant)

of the Crescent Mountain Service (Name of Applicant); that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application; that he has carefully examined all of the statements contained in such application; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

Jacob Mangrofsky.

Subscribed and sworn to before me, a notary public in and for the State and County above named,

this 11th day of February, 1936.

(SEAL)

Michael E. Gail

My commission expires

GENERAL INSTRUCTIONS

This is an emergency form which MAY be used as an alternate form in lieu of either Forms B.M.C. 1 or 2, by those claiming rights under the "Grandfather" clause of the Motor Carrier Act, 1935, as Common Carriers of property or passengers on June 1, 1935, or Contract Carriers on July 1, 1935, and continuously thereafter in interstate or foreign commerce. All those who use this form will be required subsequently to support the allegations of the application by furnishing all of the facts, statements, data, and other evidence required in Forms B.M.C. 1 and 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

"Certificates of public convenience and necessity" will be issued to Common Carriers, and "Permits" to Contract Carriers.

JACOB MANGROFSKY (Name of affiant) makes oath and says that he is the one of registered owners and partner (Title of affiant)

of the Crescent Mountain Service (Name of Applicant); that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application; that he has carefully examined all of the statements contained in such application; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

Jacob Mangrofsky

Subscribed and sworn to before me, a notary public in and for the State and County above named, this 11th day of February, 1936.

(SEAL)

Michael E Smith

My commission expires [illegible]

GENERAL INSTRUCTIONS

This is an emergency form which MAY be used as an alternate form in lieu of either Forms B.M.C. 1 or 2, by those claiming rights under the "Grandfather" clause of the Motor Carrier Act, 1935, as Common Carriers of property or passengers on June 1, 1935, or Contract Carriers on July 1, 1935, and continuously thereafter in interstate or foreign commerce. All those who use this form will be required subsequently to support the allegations of the application by furnishing all of the facts, statements, data, and other evidence required in Forms B.M.C. 1 and 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

"Certificates of public convenience and necessity" will be issued to Common Carriers, and "Permits" to Contract Carriers.

Applications on this form or on B.M.C. 1 or 2 must be filed on or before February 12, 1936. The Interstate Commerce Commission does not have authority under the Motor Carrier Act, 1935, to further extend the time for filing beyond said date. Loss of rights under the "Grandfather" clause will result from a failure to file applications therefor within the time above specified. If an operator is in doubt as to whether the service he renders comes within any of the exemptions provided in the Act, he should file an application. The filing of such application will not be deemed a waiver of any right to claim exemption from any and all provisions of the Motor Carrier Act, 1935.

Applications should be typed, and one copy kept in Applicant's files. The original of this application, properly signed and sworn to before a notary public, and one additional copy must be returned to:

THE INTERSTATE COMMERCE COMMISSION
BUREAU OF MOTOR CARRIERS
WASHINGTON, D.C.

and one true copy must be filed with the Board, or Governor if there is no Board, of each State within which operations covered by this application are conducted.

Form B. M. C.—A-2

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STATEMENT OF FACTS IN SUPPORT OF PASSENGER-CARRIER APPLICATION

(This form for use ONLY by common carriers engaged in transportation of passengers in interstate or foreign commerce on June 1, 1935, and by contract carriers so engaged on July 1, 1935, and continuously thereafter who have heretofore filed, on Form B. M. C.—A, an application for a certificate or permit under "Grandfather" clauses.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Evidence, facts, statements and data of CRESCENT MOUNTAIN SERVICE
(Full and correct name)

In support of application filed on or before February 12, 1936, on Form B. M. C.—A for certificate (Certificate or permit) to operate as common carrier (Common carrier or contract carrier) of passengers, under the Motor Carrier Act, 1935.

78980

DOCKET No. ..... (Do not fill in)

STATEMENT

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, D. C.

Applicant states, that on or before February 12, 1936, applicant filed with the Interstate Commerce Commission on Form B. M. C.—A an application for a certificate (Certificate or permit) to operate as a common carrier (Common carrier or contract carrier) and in support of the facts set forth therein, APPLICANT SUBMITS THE FOLLOWING:

MC 14010

Granted 10-31-40

That full and correct name of applicant is CRESCENT MOUNTAIN SERVICE (This)

Business address 531 East 169th Street (Street and number) Bronx (City)
Bronx (County) New York (State)

That applicant is a firm (1), doing business under the trade name or style of Crescent Mountain Service

That applicant, if a corporation, was organized under the laws of the State of ..... ; and that, if a partnership, the names and addresses of the partners are as follows:

Name	*State, city, and street address*
Harman Trevax	1095 Bristow St., Bronx, N.Y.
Jacob Vangrofsky	1111 Intervale Ave., Bronx, N.Y.
Murray Galley	1251 Webster Ave., Bronx, N.Y.
Morris Glickman	2029 La Fontaine Ave., Bronx, N.Y.

If an association, describe clearly its character .....

That a more particular description of the route, routes or territory served by the applicant (or predecessor in interest) which applicant briefly described in the application heretofore filed on B. M. C.—A, and of the type of service furnished and the operations conducted by the applicant (or predecessor in interest) on June (2) 1, 1935, is set forth in Exhibit A, attached hereto, and made a part hereof.

That no change has occurred in the type of service furnished and the operations conducted since June (2) 1, 1935, except as shown in Exhibit A.

That evidence of the operations of applicant, described in Exhibit A hereof, is contained in Exhibit B.

That applicant will furnish such additional information to substantiate the applicant's prayer, in the application heretofore filed, as the Commission may require.

That applicant has complied with the order of the Commission relative to the service of this statement on interested parties, as shown in Exhibit C.

WHEREFORE applicant prays that the evidence, facts, statements, and data contained herein and in the exhibits attached hereto, be considered by the Commission in support of said application heretofore filed.

Dated this 23d day of March, 1937

CRESCENT MOUNTAIN SERVICE
(Applicant)

By Morris Glickman member of firm
(Title)

STATEMENT

D.N. [illegible] MC 14106

To the Interstate Commerce Commission, Washington, D. C.

Applicant states, that on or before February 12, 1936, applicant filed with the Interstate Commerce Commission on Form B. M. C.—A an application for a certificate (Certificate or permit) to operate as a common carrier (Common carrier or contract carrier) and in support of the facts set forth therein, APPLICANT SUBMITS THE FOLLOWING:

Granted 10-31-40

That full and correct name of applicant is CRESCENT MOUNTAIN SERVICE

Business address 531 East 169th Street (Street and number) Bronx (City) Bronx (County) New York (State)

That applicant is a firm (1), doing business under the trade name or style of Crescent Mountain Service

That applicant, if a corporation, was organized under the laws of the State of ; and that, if a partnership, the names and addresses of the partners are as follows:

Name	*State, city, and street address*
Herman Trevax	1595 Bristow St., Bronx, N.Y.
Jacob Vangrofsky	1111 Intervale Ave., Bronx, N.Y.
Murray Galley	1251 Webster Ave., Bronx, N.Y.
Morris Glickman	2029 La Fontaine Ave., Bronx, N.Y.

If an association, describe clearly its character

That a more particular description of the route, routes or territory served by the applicant (or predecessor in interest) which applicant briefly described in the application heretofore filed on B. M. C.—A, and of the type of service furnished and the operations conducted by the applicant (or predecessor in interest) on June (2) 1, 1935, is set forth in Exhibit A, attached hereto, and made a part hereof.

That no change has occurred in the type of service furnished and the operations conducted since June (2) 1, 1935, except as shown in Exhibit A.

That evidence of the operations of applicant, described in Exhibit A hereof, is contained in Exhibit B.

That applicant will furnish such additional information to substantiate the applicant's prayer, in the application heretofore filed, as the Commission may require.

That applicant has complied with the order of the Commission relative to the service of this statement on interested parties, as shown in Exhibit C.

Wherefore applicant prays that the evidence, facts, statements, and data contained herein and in the exhibits attached hereto, be considered by the Commission in support of said application heretofore filed.

Dated this 23rd day of March, 1937

CRESCENT MOUNTAIN SERVICE (Applicant)

By Morris Glickman member of firm (Title)

OATH

INTERSTATE COMMERCE COMMISSION RECEIVED MAR 26 1937 SECTION OF CERTIFICATES & INS.

State of New York

County of ~~Bronx~~ New York } ss.

Morris Glickman (Name of affiant) makes oath and says that he is ~~xxx~~ member of firm (Title of affiant) of the Crescent Mountain Service (Name of applicant); that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this statement and exhibits attached thereto; that he has carefully examined all the statements contained therein, and the exhibits attached thereto, and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

Morris Glickman

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 23rd day of March, 1937

[SEAL]

Milton Cotton

My commission expires Milton Cotton

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U. S. GOVERNMENT PRINTING OFFICE 16—1488

73080

SUPPLEMENTAL PASSENGER CARRIER APPLICATION

CRESCENT MOUNTAIN SERVICE

Applicant reserves the right to make application for any and all additional regular and irregular routes not herein contained to which it is entitled pursuant to Section 206 and/or Section 209 of the Motor Carrier Act, 1935; and applicant further reserves the right to claim exemption from any and all provisions of the Motor Carrier Act, 1935, and the filing of this application shall not be deemed a waiver of any of the applicant's rights.

INTERSTATE COMMERCE COMMISSION
RECEIVED
MAR 26 1937
SECTION OF CERTIFICATES & INS.

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B. Applicant (or predecessor) undertook to transport for the general public for hire ...Yes... (Yes or No) If answer is "No", state for whom applicant (or predecessor) transported under special contracts or agreements:

Name	City and street address	Written or verbal

C. Applicant has continued to operate as above stated without any change in the ty[illegible] and is now so operating ...Yes... (Yes or No) If answer is "No", state in detail character and extent of such change:

INTERSTATE COMMERCE COMMISSION
RECEIVED
MAR 26 1937
SECTION OF CERTIFICATES & INFO.

D. If service was not rendered on or has been interrupted since statutory date, give facts and reasons clearly and in detail

...no interruptions...

II. Description of each route regularly operated on ...June... (3) 1, 1935:

A. By applicant (or predecessor in interest) in own right:

1. Between ...See Supplemental Exhibit A-II-A... (Indicate furthermost points on route), as follows:

(a) From ...New York City... (Indicate furthermost points under each highway number) to ...Fort Lee, N. J.... via Highway ...Geo. Wash. Br.... (Use U. S. highway number wherever applicable; otherwise State or county highway number)

(b) From ...Fort Lee, New Jersey... to ...Bergenfield, N.J.... via Highway ...N.J. #4...

(c) From ...Bergenfield, N.J.... to ...Suffern, New York... via Highway ...N.J. #2...

(d) From ...Suffern, New York... to ...Sullivan & Ulster Cos.... via Highway ...N.Y. #17...

(e) From ..... to ..... via Highway .....

(Repeat as above for each route and part thereof. See example in note 3 on last page. Indicate in each case whether return routes correspond to those above described. If not, furnish similar description for return route. Furnish map showing each route.)

Show also, for each route separately:

(1) Whether all intermediate points were served ..... (Yes or No); if not, indicate exceptions .....

...See Supplemental Exhibit A-II-A (1)...

(2) The off-route points served .....

...See Supplemental Exhibit A-II-A (2) (4)...

(3) Character of traffic (that is, in addition to passengers and baggage of passengers, whether express, mail, newspapers were transported in same vehicle with passengers) ...passengers and baggage of passengers only...

(4) Frequency of service (where interval between schedule was one day or more) .....

...Seasonal operations (see Sup. Exhibit A-II-G...

(5) Points at which traffic was interchanged, with whom interchanged, and the arrangement, if any, under which interchange was effected, including whether or not through tickets were sold .....

...no interchange of traffic...

12—1939

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EXHIBIT A—Continued

B. Has applicant acquired or instituted a route or routes since June (2) 1, 1935? no (Yes or no) If so, attach statement (designated as II-B), giving, for each such route, the information requested in A above and name and address of predecessor, if any. Attach copy of purchase agreement, State certificates or permits, or other documents evidencing acquisition or institution of each such route or routes.

C. Did applicant in application heretofore filed apply for rights over any route or routes operated by others under agreement? no (Yes or no) If so, attach statement (designated as II-C), giving, for each such route, the information requested in A above and name and address of operator. Attach copy of lease or operating agreement.

D. Does applicant operate over any route or routes under a lease or operating agreement? no (Yes or no) If so, attach statement (designated as II-D), giving, for each such route, the information requested in A above and name and address of the other party to such lease or agreement. Attach copy of such lease or agreement.

E. Has applicant abandoned or otherwise disposed of any route or routes since June (2) 1, 1935? no (Yes or no) If so, attach statement (designated as II-E), giving, for each such route, the information requested in A above, the manner and date of disposition, and name and address of successor, if any. Attach copy of sales agreement or other documents evidencing such disposal.

F. Were operations on any of the above routes or parts of routes begun since January 1, 1935? no (Yes or no) If so, give the date on which operations commenced .....

G. Were operations on any of the above routes or parts of routes seasonal? yes (Yes or no) If so, attach statement (designated as II-G), giving the facts clearly and in detail, showing applicant's customary operation, including months of normal operating season.

III. If applicant (or predecessor in interest) on June (2) 1, 1935, conducted special or charter operations, indicate the territory served and whether such operations have been conducted continuously since no special operations

IV. Description of *special or charter operations* on June (2) 1, 1935. (To be furnished by those applicants rendering ONLY special or charter service.) NONE

A. Indicate territory served by setting forth (1) points at which traffic originated, (2) points or territory served, (3) frequency of service to each such point or territory in the 6 months preceding (2) 1, 1935, and (4) whether baggage, express, mail, newspapers were transported in the same vehicles with passengers. See Sup Exhibit A-IV-A

B. Have there been any changes in the nature or extent of applicant's operations between June (2) 1, 1935, and date of this statement? no (Yes or no) If so, describe the changes in detail .....

D. Does applicant operate over any route or routes under a lease or operating agreement? no (Yes or no) If so, attach statement (designated as II-D), giving, for each such route, the information requested in A above and name and address of the other party to such lease or agreement. Attach copy of such lease or agreement.

E. Has applicant abandoned or otherwise disposed of any route or routes since June (3) 1, 1935? no (Yes or no) If so, attach statement (designated as II-E), giving, for each such route, the information requested in A above, the manner and date of disposition, and name and address of successor, if any. Attach copy of sales agreement or other documents evidencing such disposal.

F. Were operations on any of the above routes or parts of routes begun since January 1, 1935? no (Yes or no) If so, give the date on which operations commenced .....

G. Were operations on any of the above routes or parts of routes seasonal? yes (Yes or no) If so, attach statement (designated as II-G), giving the facts clearly and in detail, showing applicant's customary operation, including months of normal operating season.

III. If applicant (or predecessor in interest) on June (3) 1, 1935, conducted special or charter operations, indicate the territory served and whether such operations have been conducted continuously since no special operations

IV. Description of *special or charter operations* on June (3) 1, 1935. (To be furnished by those applicants rendering ONLY special or charter service.) NONE

A. Indicate territory served by setting forth (1) points at which traffic originated, (2) points or territory served, (3) frequency of service to each such point or territory in the 6 months preceding ..... (3) 1, 1935, and (4) whether baggage, express, mail, newspapers were transported in the same vehicles with passengers. See Sup Exhibit A-IV-A

B. Have there been any changes in the nature or extent of applicant's operations between June (3) 1, 1935, and date of this statement? no (Yes or no) If so, describe the changes in detail .....

.....

V. A. Number of vehicles in revenue service on June (3) 1, 1935:

Buses: 15 seats and under, 0; 16-21, 0; 22-29, 0; 30-33, 0; 34-40, 0; over 40, 0; sedans, 6 Total revenue vehicles owned by applicant 6 Total number leased to applicant 0 Total number leased by applicant to others 0

B. Number of vehicles in revenue service on date of this statement:

Buses: 15 seats and under, 0; 16-21, 0; 22-29, 0; 30-33, 0; 34-40, 0; over 40, 0; sedans 0 Total revenue vehicles owned by applicant 0 Total number leased to applicant 0 Total number leased by applicant to others 0

SUPPLEMENTAL EXHIBIT A

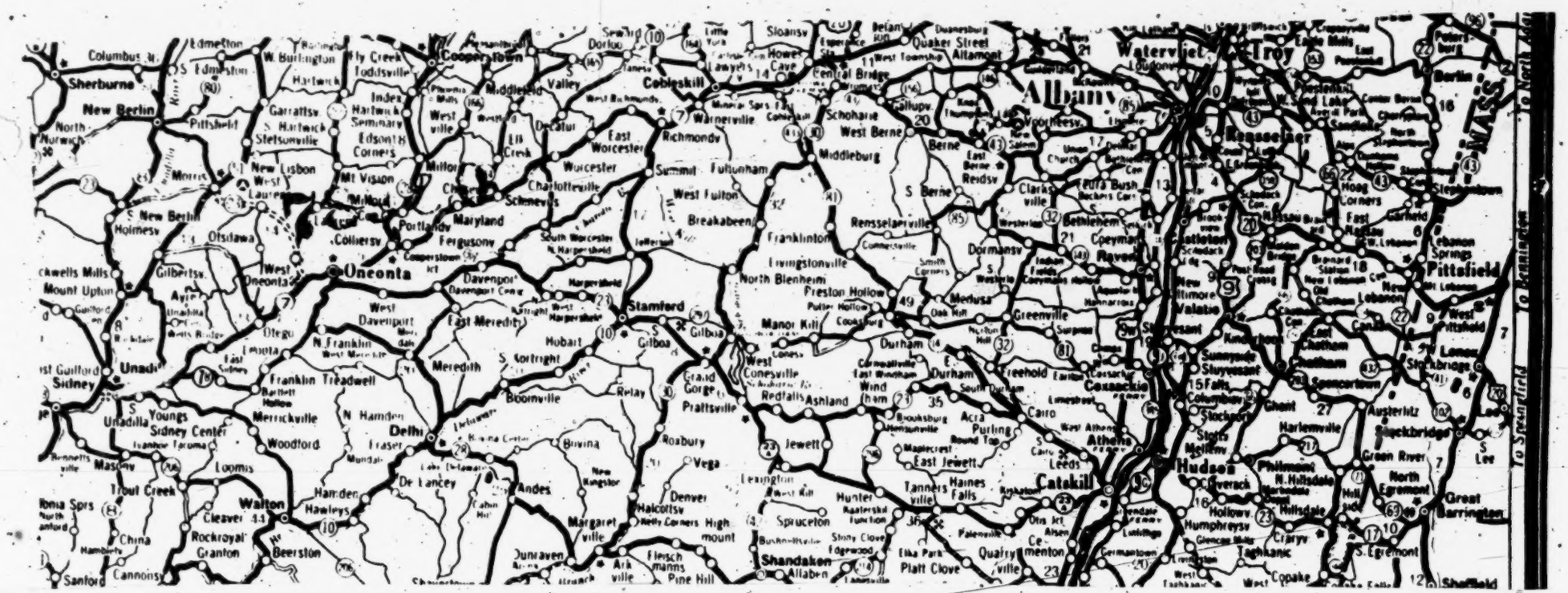
CRESCENT MOUNTAIN SERVICE
Applicant

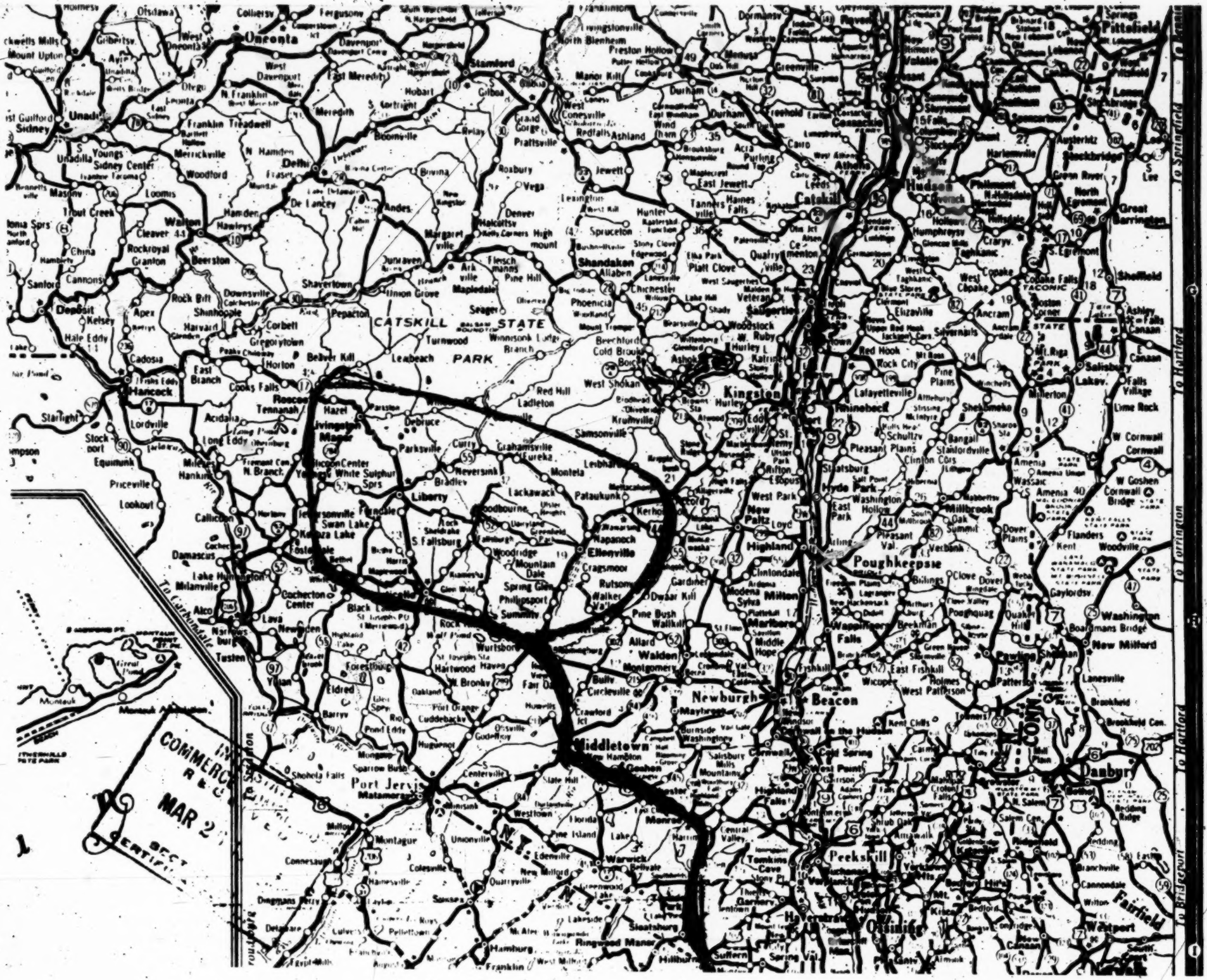
78980

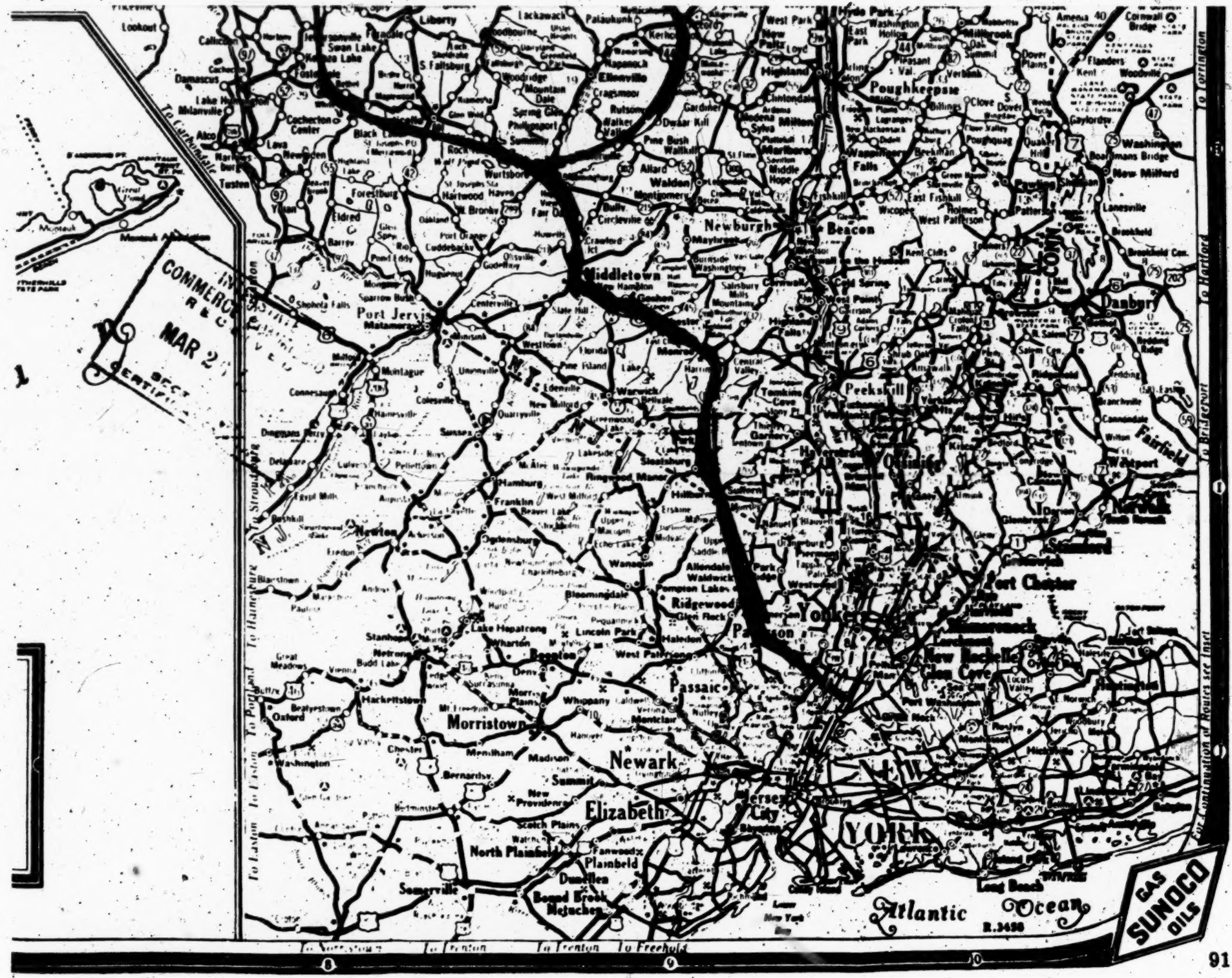
II-A Applicant transports passengers and baggage of passengers from the Borough of the Bronx, City of New York, to Sullivan and Ulster Counties, New York, and more particularly to Woodbourne, New York, in Sullivan County and within a radius of twenty (20) miles from the town of Woodbourne, New York

Applicant travels by way of George Washington Bridge to Fort Lee, New Jersey, thence northwest on New Jersey Route #4 to Bergenfield, New Jersey; thence north on New Jersey Route #2 to Suffern, New York; thence on New York Route #17 to Wurtsboro, New York, where traffic is distributed to the summer resorts within a radius of twenty (20) miles from Woodbourne, New York.

MAP SHOWING APPLICANT'S ROUTES:




CATSKILL STATE PARK
Oneonta
Stamford
Unadilla
Sidney
Delhi
Walton
Hancock
Roscoe
Livingston Manor
Liberty
Monticello
Kingston
Catskill
Hudson
Poughkeepsie
Newburgh
Beacon
Middletown
Port Jervis
Peekskill
Danbury
Pittsfield
Great Barrington
Salisbury
Canaan
Millerton
Amenia
Millbrook
Pine Plains
Rhinebeck
Red Hook
Tivoli
Saugerties
Woodstock
Phoenicia
Shandaken
Margaretville
Andes
Delhi
Sidney
Unadilla
Oneonta
Cooperstown
Richfield Springs
Cherry Valley
Sharon Springs
Schoharie
Middleburgh
Cobleskill
Schenectady
Albany
Troy
Hoosick Falls
Bennington
Manchester
Arlington
Rutland
Poultney
Granville
Whitehall
Glens Falls
Saratoga Springs
Ballston Spa
Amsterdam
Gloversville
Johnstown
Fonda
Canajoharie
Herkimer
Little Falls
Utica
Rome
Oneida
Syracuse
Auburn
Cortland
Binghamton
Owego
Waverly
Elmira
Corning
Hornell
Wellsville
Olean
Bradford
Kane
Warren
Jamestown
Dunkirk
Buffalo
Niagara Falls
Lockport
Batavia
Rochester
Geneseo
Mount Morris
Canandaigua
Geneva
Penn Yan
Watkins Glen
Hammondsport
Corning
Elmira
Ithaca
Seneca Falls
Waterloo
Auburn
Skaneateles
Cazenovia
Hamilton
Norwich
Oxford
Sherburne
Morrisville
Canastota
Oneida
Rome
Clinton
New Hartford
Utica
Herkimer
Mohawk
Ilion
Frankfort
Little Falls
Dolgeville
Fort Plain
St. Johnsville
Canajoharie
Palatine Bridge
Amsterdam
Johnstown
Gloversville
Fonda
Sharon Springs
Cherry Valley
Richfield Springs
Cooperstown
Milford
Otsego Lake
Schuylerville
Saratoga Springs
Ballston Spa
Glens Falls
Whitehall
Granville
Hoosick Falls
Bennington
Manchester
Arlington
Rutland
Poultney
Castleton
Fair Haven
Middlebury
Vergennes
Burlington
Plattsburgh
Malone
Ogdensburg
Massena
Potsdam
Canton
Gouverneur
Watertown
Sackets Harbor
Henderson
Oswego
Fulton
Pulaski
Sandy Creek
Mexico
Phoenix
Baldwinsville
Jordan
Elbridge
Skaneateles
Auburn
Seneca Falls
Waterloo
Geneva
Penn Yan
Watkins Glen
Hammondsport
Corning
Elmira
Ithaca
Cortland
Homer


Poughkeepsie
Newburgh
Middletown
Port Jervis
Peekskill
Danbury
Yonkers
Mount Vernon
New Rochelle
Port Chester
Stamford
Norwalk
Bridgeport
Fairfield
Passaic
Paterson
Hackensack
Morristown
Newark
Elizabeth
Jersey City
Plainfield
North Plainfield
Somerville
Dunellen
Bound Brook
Metuchen
Perth Amboy
Long Beach
Atlantic Ocean
To Hartford
To Bridgeport
To Stroudsburg
To Hamburg
To Portland
To Easton
To Trenton
To Freehold
GAS
SUNOCO
OILS

CRESCENT MOUNTAIN SERVICE
Applicant

78980

II-A-(1)

All intermediate points on the aforedescribed routes were not served. The applicant's main station in Sullivan County is located at Woodbourne, New York. The intermediate points served are located between Wurtsboro, New York, and Woodbourne, New York.

II-A-(2)

The off-routes points served are located within a radius of twenty (20) miles- north, east, south and west- of Woodbourne, New York, in Sullivan County.

II-G

All of the applicant's operations are seasonal operations. Applicant transports passengers and baggage of passengers from the County of Bronx, New York, to the summer resorts of New York located in the Counties of Sullivan and Ulster. These operations are commencedin the month of June and continue up to the month of October.

IV-A

Applicant obtains its traffic in the Boroughs of Manhattan and Bronx, in the City of New York, State of New York, and transports such traffic to the Counties of Sullivan and Ulster, in the State of New York. On return trips the applicant obtains its traffic in and about Woodbourne, New York, more specifically within a radius of twenty (20) miles from Woodbourne, New York, and transports such traffic to the five boroughs of New York City.

Trips are made ~~three and four times a week~~ daily during the months of June, July, August and September.

Baggage of passengers is transported in addition to passengers; there is no express, mail or newspapers transported.

CRESCENT MOUNTAIN SERVICE
Applicant

78980

II-A-(1)

All intermediate points on the aforedescribed routes were not served. The applicant's main station in Sullivan County is located at Woodbourne, New York. The intermediate points served are located between Wurtsboro, New York, and Woodbourne, New York.

II-A-(2)

The off-routes points served are located within a radius of twenty (20) miles- north, east, south and west- of Woodbourne, New York, in Sullivan County.

II-G

All of the applicant's operations are seasonal operations. Applicant transports passengers and baggage of passengers from the County of Bronx, New York, to the summer resorts of New York located in the Counties of Sullivan and Ulster. These operations are commencedin the month of June and continue up to the month of October.

IV-A

Applicant obtains its traffic in the Boroughs of Manhattan and Bronx, in the City of New York, State of New York, and transports such traffic to the Counties of Sullivan and Ulster, in the State of New York. On return trips the applicant obtains its traffic in and about Woodbourne, New York, more specifically within a radius of twenty (20) miles from Woodbourne, New York, and transports such traffic to the five boroughs of New York City.

Trips are made ~~three and four times a week~~ daily during the months of June, July, August and September. ✓

Baggage of passengers is transported in addition to passengers; there is no express, mail or newspapers transported.

Form B. M. C.—4-8

//

EXHIBIT B

CRESCENT MOUNTAIN SERVICE
(Name of applicant)

EVIDENCE OF OPERATION

1. Applicant as a common carrier on June 1, 1935, or a contract carrier on July 1, 1935, submits the following evidence as proof of his operations:

A. Certified copy of any order of any State authorizing applicant's or predecessor's operations and of any order authorizing transfer of such authority to applicant. (Attach and identify as statement B-I-A.)

B. That applicant or predecessor was registered under a code of fair competition as follows:

Registrant (If predecessor, give name)	*Name of code*	*Date or dates of registration*
		78680

INTERSTATE COMMERCE COMMISSION
RECEIVED
MAR 25 1937
SECTION OF CERTIFICATES & INS

C. Any other proof deemed necessary by applicant, such as affidavits, waybills, time schedules, etc. (Attach and identify as statement B-I-C.)

(Applicant submits a copy of a Certificate of Conducting Business as required by Section 440 of the Penal Law.)

EXHIBIT C

I, Milton Patton (Name of affiant), attorney for (Title of affiant) of the applicant, do hereby certify that upon the 24th day of March, 1937, I served the foregoing statement upon the boards, commissions, or officials (or the Governor where there is no board, commission, or official) of the States of New York and New Jersey in which States applicant operates, by delivering in person (or mailing by registered mail) a true, correct, and complete copy of this statement to each thereof at the following addresses:

B. That applicant or predecessor was registered under a code of fair competition as follows: 78080

Registrant (If predecessor, give name)	*Name of code*	*Date or dates of registration*

INTERSTATE COMMERCE COMMISSION
RECEIVED
MAR 25 1937
SECTION OF CERTIFICATES & INS

C. Any other proof deemed necessary by applicant, such as affidavits, waybills, time schedules, etc. (Attach and identify as statement B-I-C.)

(Applicant submits a copy of a Certificate of Conducting Business as required by Section 440 of the Penal Law.)

EXHIBIT C

I, Melton Cotton (Name of affiant), attorney for (Title of affiant) the applicant, do hereby certify that upon the 26th day of March, 1937, I served the foregoing statement upon the boards, commissions, or officials (or the Governor where there is no board, commission, or official) of the States of New York and New Jersey in which States applicant operates, by delivering in person (or mailing by registered mail) a true, correct, and complete copy of this statement to each thereof at the following addresses:

Public Service Commission (Name of board, etc.) Albany, New York (Address)

Board of Public Utility Commissioners- Trenton, New Jersey

Melton Cotton (Applicant)

19—1408

801—Certificate of Conducting Business under an Assumed Name. Penal Law Sec. 440.

JULIUS BLUMBERG, Inc., Law Blank Publishers 81 BROADWAY AND 1 RECTOR ST., NEW YORK

(Exhibit B-I-C)

12

State of New York,
County of Bronx } ss.:

We, The undersigned do hereby certify that we conduct or transact business in the said County under the name and style of

CRESCENT MOUNTAIN SERVICE

at 531 E. 169th Street, in the said County of Bronx and State of New York, and further certify that the true or real full name of the person conducting or transacting the said business, are as follows:

78980

Signature	Residence
Herman Trevaf	1395 Bristow St Bronx
Jacob Vangrofsky	1111 Intervale Av Bronx
Murray Gallay	1257 Wickles Av Bx
Morris Gluckman	2029 Lafontaine Ave

INTERSTATE COMMERCE COMMISSION RECEIVED MAR 26 1937 SECTION OF CERTIFICATES & INS.

Signature	Residence
Herman Trevas	1395 Bristow St Bronx
Jacob Vangrofsky	1111 Intervale Av Bronx
Murray Gallay	1257 Wickles Av Bx
Morris Gluckman	2029 Lafontaine Ave

STATE OF
COMMERCE COMMISSION
RECEIVED
MAR 26 1937
SECTION OF
CERT. FICATES & INS.

No. 13982

State of New York, } ss.:
County of Bronx, }

rsonally appeared

I, NICHOLAS J. EBERHARD, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, Do Certify, That I have compared the preceding with the original

ay Gallay

ted the foregoing

xecuted the same.

Harold Marcus

on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed. Mar. 3, 1937

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 3rd day of Mar 1937

Nicholas J Eberhard Clerk.

94

3501—Certificate of Conducting Business under an Assumed Name Penal Law Sec. 440.

(Exhibit B-I-C)

12

State of New York, County of Bronx } ss.:

We The undersigned do hereby certify that we conduct or transact business in the said County under the name and style of

CRESCENT MOUNTAIN SERVICE

at 531 E. 167th Street, in the said County of Bronx and State of New York, and further certify that the true or real full name of the person(s) conducting or transacting the said business, are as follows:

78980

Signature	Residence
Herman Cherap	1375 Bristow St Bronx
Jacob Pungrofsky	1111 Intervale Av Bronx
M [illegible] Clay	1231 Wickles Av Bx
Morris Gluckman	2029 Lafontaine Ave

INTERSTATE COMMERCE COMMISSION RECEIVED MAR 23 1937 SECTION OF CERTIFICATES & INS.

Signature	Residence
Herman Tarver	1395 Bristow St Bronx
Jacob Weingrofsky	1111 Intervale Av Bronx
Harry Gilley	1251 Wickles Av Bx
Morris Glickman	2029 Lafontaine Ave

INTERSTATE COMMERCE COMMISSION
RECEIVED
MAR 26 1937
SECTION OF CERTIFICATES & INS.

New York, }
Bronx } ss.:

this 24th day of May, 1936, before me personally appeared Herman Tarver, Jacob Weingrofsky, Harry Gilley and Morris Glickman

known and known to me to be the individuals described in, and who executed the foregoing instrument, and they thereupon duly acknowledged to me that they executed the same.

U.S.

Richard E. Thiel

NOTARY PUBLIC
No. 7N15
No. 4N37
Commission expires March 30, 1937

95

Certificate

of

Herman Treat
Jacob Vengrofsky
Harry Sullam
Morris Cudman

CONDUCTING BUSINESS UNDER
THE NAME OF

CRESCENT MOUNTAIN
SERVICE

Pursuant to Sec. 440 Penal Law

69

Interstate Commerce Commission

BUREAU OF MOTOR CARRIERS

Jacob Vancrofsky
531 E. 169th St.,
New York City

Date: Dec 12 193 1

Dear Sir: M.C. # 78980

You are directed to appear at

Place: Room 724, 60 Hudson St.,
New York City (B)

Date: Dec 11, 1935

Time: 1 P.M.

with three completed copies of questionnaire for the purpose of furnishing data pertinent to the issuance of a certificate or permit to you under your "Grandfather" application to this Commission as provided in the Motor Carrier Act.

Your success or failure in securing a certificate or permit is directly dependent upon your cooperating with me at this time in furnishing the information requested.

Herewith are forms setting forth a series of questions which you are obliged to answer. There is also given you herewith a detailed statement of how you are to answer these questions.

It is your duty to proceed at once to answer this questionnaire as directed, so that when you meet with me at the time and place previously named in this letter your data may be ready for review.

You should understand that if any of the instructions herein are not clear, you may secure further information on these requirements upon application to this office.

Your failure to comply with these instructions may result in your being denied a certificate or permit, and will certainly lead to severe and unnecessary expense in protecting your rights in the future if neglected now.

[illegible]
551 E. 169th St.,
New York City

Date Dec 15 193[illegible]

Dear Sir: M.C. # 78980

You are directed to appear at

Place: Room 724, 60 Hudson St.,
New York City (B)

Date: Dec 11 1936

Time: 1 P.M.

with three completed copies of questionnaire for the purpose of furnishing data pertinent to the issuance of a certificate or permit to you under your "Grandfather" application to this Commission as provided in the Motor Carrier Act.

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Your failure to comply with these instructions may result in your being denied a certificate or permit, and will certainly lead to severe and unnecessary expense in protecting your rights in the future if neglected now.

No expense is necessary if you follow the instructions given.

Yours very truly,

District Supervisor.

70

Interstate Commerce Commission

BUREAU OF MOTOR CARRIERS

Mr. Jacob Vancrofsky
531 E. 169 St.
New York City

Date: Jan. 18, 193

Dear Sir: M.C. # 78980

You are directed to appear at

Place: Room 724, 360 Hudson St.
New York City

Date: February 7th

Time: 10:00 am

with three completed copies of questionnaire for the purpose of furnishing data pertinent to the issuance of a certificate or permit to you under your "Grandfather" application to this Commission as provided in the Motor Carrier Act.

I sent you a notice to appear for examination and proof of operation covering the "Grandfather" rights for which you applied, and you failed to keep that appointment. I am setting another date for an appointment with you for this purpose, as provided above in this letter.

I wish to advise you that it is your duty to appear and furnish the information called for at the time and place specified, and must advise you that your failure to do so will result in my returning a report on your activity to our Bureau at Washington, to the effect that you are not interested in prosecuting your claim further and with my recommendation that your application be dismissed.

531 E. 169 St.
New York City

Dear Sir: M.C. # 78980

You are directed to appear at

Place: Room 724, #60 Hudson St.
New York City

Date: February 7th

Time: 10:00 am

with three completed copies of questionnaire for the purpose of furnishing data pertinent to the issuance of a certificate or permit to you under your "Grandfather" application to this Commission as provided in the Motor Carrier Act.

I sent you a notice to appear for examination and proof of operation covering the "Grandfather" rights for which you applied, and you failed to keep that appointment. I am setting another date for an appointment with you for this purpose, as provided above in this letter.

I wish to advise you that it is your duty to appear and furnish the information called for at the time and place specified, and must advise you that your failure to do so will result in my returning a report on your activity to our Bureau at Washington, to the effect that you are not interested in prosecuting your claim further and with my recommendation that your application be dismissed.

I wish to point out to you that if such action is taken by me, that it will then be necessary for you to handle any further activity in connection with your application in a formal manner with the Commission, which is liable to be expensive. I trust that if you do have any interest in your application, that you will not fail to appear at the time and place above specified.

Yours very truly,

(A. BAXTER)
District Supervisor.

98

Docket M.C. #78980

Q.1. What is the full and correct name of applicant?

A. JACOB VANGROFSKY, HERMAN TRAVAX, MORRIS GLICKMAN and MURRAY GALLEY, d.b.a. CRESCENT MOUNTAIN SERVICE

Q.2. What is the principal business address?

A. 531 East 169th Street, Borough of Bronx, City and State of N.Y.

Q.3. What is the legal identity of applicant?

A. Partnership.

Q.4. How many motor vehicle units do you operate?

A. Seven (7) Units

Q.5. Have you complied with the insurance requirements of this Commission? Give names of insurance companies, give policy numbers, give amounts of coverage, give effective date, give expiration date.

A. Public Liability Ins. Co. is _____

Policy No. _____ Coverage _____ Eff. Date _____ Exp. Date ___

Property Damage Ins. Co. is _____

Policy No. _____ Coverage _____ Eff. Date _____ Exp. Date ___

Cargo Insurance Company is _____

Policy No. _____ Coverage _____ Eff. Date _____ Exp. Date ___

Passenger Liability Ins. Co. is Red Cab Mutual Casualty Company

Policy No. T7852 Coverage $5,000-$15,000 Eff. Date Jan 14/38 Exp. Date Dec. 31/38

Q.6. Have you tariffs, or schedules of minimum rates on file with this Commission? List them.

A. M.P.I.C.C. #1 - - Docket # 78980

A. Partnership.

Q.4. How many motor vehicle units do you operate?

A. Seven (7) Units

Q.5. Have you complied with the insurance requirements of this Commission? Give names of insurance companies, give policy numbers, give amounts of coverage, give effective date, give expiration date.

A. Public Liability Ins. Co. is _____

Policy No. _____ Coverage _____ Eff. Date _____ Exp. Date ___

Property Damage Ins. Co. is _____

Policy No. _____ Coverage _____ Eff. Date _____ Exp. Date ___

Cargo Insurance Company is _____

Policy No. _____ Coverage _____ Eff. Date _____ Exp. Date ___

Passenger Liability Ins. Co. is Red Cab Mutual Casualty Company

Policy No. T7857 Coverage $5,m-$15,m Eff. Date Jan 14/38 Exp. Date Dec. 31/38

Q.6. Have you tariffs, or schedules of minimum rates on file with this Commission? List them.

A. M.P.I.C.C. #1 - - Docket # 78980

Q.7. What type of service were you rendering on June 1, or July 1, 1935, and since that date?

A. Applicant was in operation as a common carrier of passengers on June 1, 1935, prior thereto and since, in interstate transportation.

Q.8. What was the scope of the operation on June 1, or July 1, 1935?

A. See Supplemental Exhibit A

Q.9. What proof of operation as of June 1, or July 1, have you to submit in support of your claim of "Grandfather" rights?

A.

Q.10. Have there been any changes in operations or any interruptions in service?

A. No, except that applicant operates only from late May to late September in each year. Operations are seasonal only.

Q.10A. Have you made proper filing of your statutory agent in the States in which you operate, and with this Commission?

A. Yes

Q.11. State of New York)
County of New York) ss.

JACOB VANOROFSKY, affiant makes oath and says that he is partner of the applicant applicant for a certificate and/or permit, that he has personal knowledge of the statements made herein, and in supplementary statements attached hereto and made a part hereof, and that all matters herein are a true and cor-

[illegible] in support of your claim of "Grandfather" rights?

A. _____

Q.10. Have there been any changes in operations or any interruptions in service?

A. No, except that applicant operates only from late May to late September in each year. Operations are seasonal only.

Q.10A. Have you made proper filing of your statutory agent in the States in which you operate, and with this Commission?

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Q.11. State of New York)
County of New York) ss.

JACOB VANOROFSKY, affiant makes oath and says that he is partner of the applicant applicant for a certificate and/or permit, that he has personal knowledge of the statements made herein, and in supplementary statements attached hereto and made a part hereof, and that all matters herein are a true and correct statement of fact to the best of his knowledge and belief.

Jacob Vanorofsky

Q.12. Subscribed and sworn to before me, a notary public _____ in and for the State and County above named, this 15th day of January, 1938 193 . My Commission expires March 30, 1939.

Milton Cotton

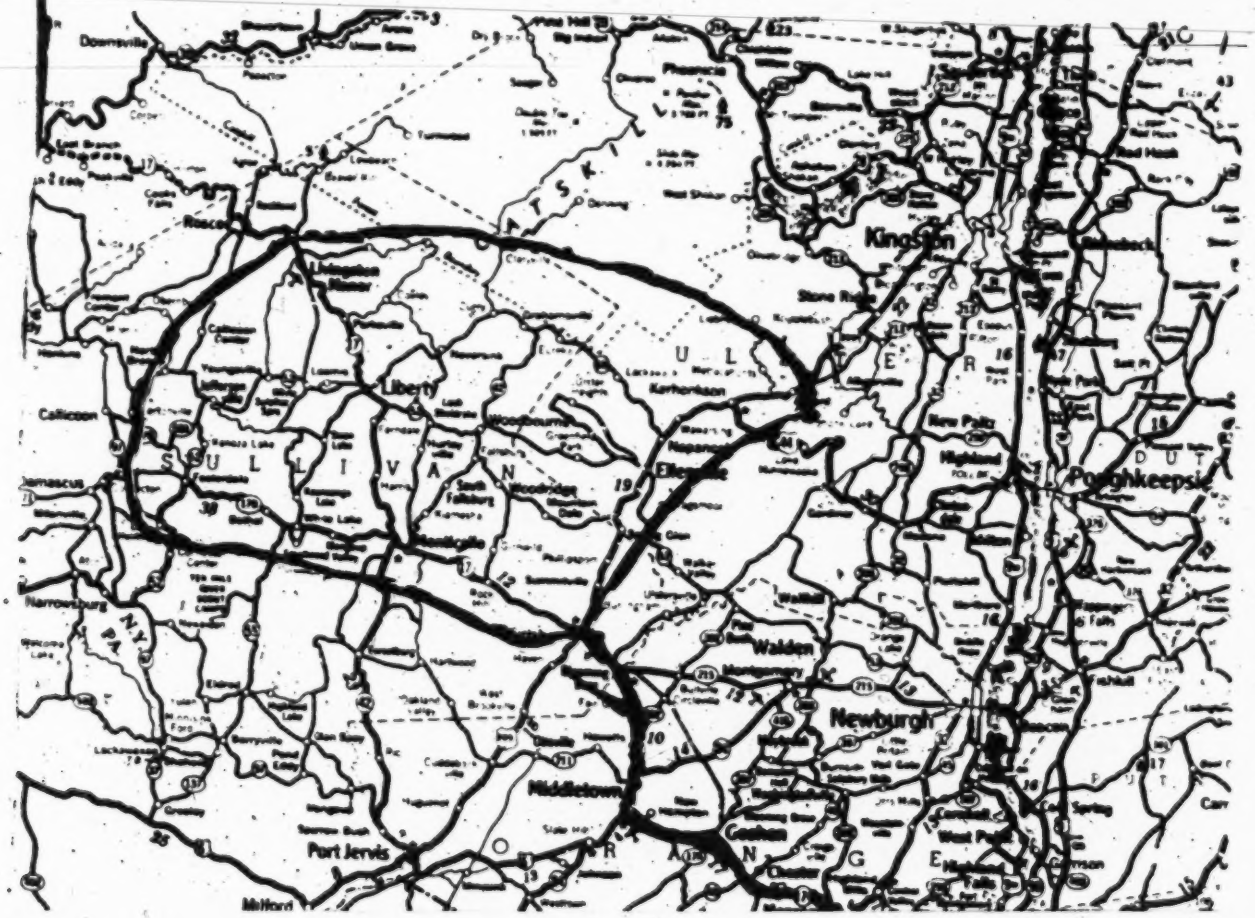
SUPPLEMENTAL EXHIBIT A

CRESCENT MOUNTAIN SERVICE
Applicant

Q.8. - A.I. Applicant transports passengers and baggage of passengers from the Borough of Bronx, City of New York, to Sullivan and Ulster Counties, New York, and more particularly to Woodburne, New York, in Sullivan County, and within a radius of twenty (20) miles from the town of Woodburne, New York.

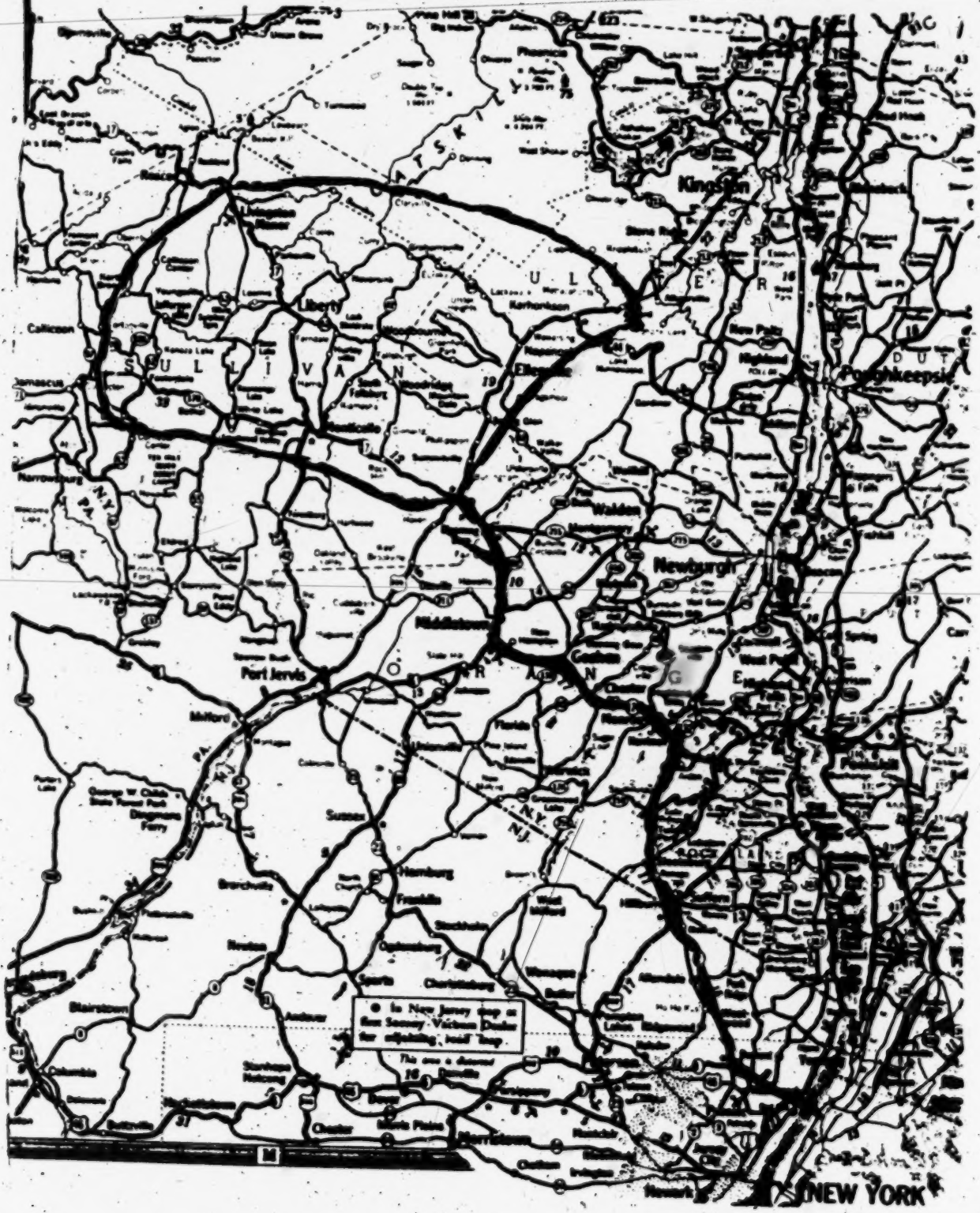
Applicant travels by way of George Washington Bridge to Fort Lee, New Jersey, thence northwest on New Jersey Route #4 to Bergenfield, New Jersey; thence north on New Jersey Route #2 to Suffern, New York; thence on New York Route #17 to Wurtsboro, New York, where traffic is distributed to the summer resorts within a radius of twenty (20) miles from Woodbourne, New York.

MAP SHOWING APPLICANT'S ROUTES AND POINTS SERVED:



on New York Route #17 to Wurtsboro, New York, where traffic is distributed to the summer resorts within a radius of twenty (20) miles from Woodbourne, New York.

MAP SHOWING APPLICANT'S ROUTES AND POINTS SERVED:



[fol. 102] Supplemental Exhibit A

Crescent Mountain Service

Applicant

Q. 8

A. I.—a. (1)

All intermediate points on the aforedescribed routes were not served. The applicant's main station in Sullivan County is located in Woodbourne, New York. The intermediate points served are located between Wurtsboro, New York, and Woodbourne, New York.

A. I.—a. (2)

The off-route points served are located within a radius of twenty (20) miles—north, east, south and west of Woodbourne, New York.

A. I.—b.

Baggage of the passengers is transported in addition to passengers; there is no express, mail or newspapers transported.

A. II.—a.

Applicant obtains its traffic in the Boroughs of Manhattan and Bronx, New York, and transports said traffic to the Counties of Sullivan and Ulster, in the State of New York. On return trips the applicant obtains its traffic in and about Woodbourne, New York, more specifically within a radius of twenty (20) miles from Woodbourne, New York, and transports such traffic to the five boroughs of New York City.

A. II.—b.

All of the applicant's operations are seasonal. Applicant transports passengers and baggage of passengers from the County of Bronx, New York, to the summer resorts of New York located in the Counties of Sullivan and Ulster. These operations are commenced in the month of June and continue up to the month of October.

[fol. 103] Supplemental Exhibit B

Crescent Mountain Service

Applicant

Q. 9 Exhibit	Date of Transaction	Point of Origin	Point of Destination
1935 Diary	May 30, 1935	Bronx, N. Y.	Kiamesha, N. Y.
Affidavits of Ida Kramer and Julius Weiss	May 30, 1935	Bronx, N. Y.	Kiamesha, N. Y.
Affidavit of Edna Livingston	Summer of 1934 and 1935	Bronx, N. Y. North Branch, N. Y.	North Branch, N. Y. Bronx, N. Y.
Affidavit of Adela Dingenthal	Summer of 1934 and 1935	Bronx, N. Y. Accord, N. Y.	Accord, N. Y. Bronx, N. Y.

Additional Evidence

Affidavit of Clarence B. Newhouse—Justice of Peace, Bloomingburg, N. Y.—evidence of use of route described in Schedule A.

Affidavit of Harris Trevax—evidence of history of Crescent Mountain Service—their business—sample business card used.

Affidavit of William Klumpp—evidence of employment by Crescent Mountain Service.

Affidavit of Israel Levine—evidence of rental of station in Bronx.

Affidavits of Isaac Feldman, Moe Bail, Harry K. Cohen—evidence of hotel-keepers familiar with Crescent Mountain Service.

Affidavit of Bella Sussman—evidence of transportation.

Affidavits of William L. Cairns and Arthur Gillip in—evidence of employment by Crescent Mountain Service.

Affidavit of New York Telephone Company—evidence of station in Woodbourne, N. Y., and telephone number.

Affidavit of Albert Baron, d.b.a., Bronx Commercial Press—evidence of old circulars.

Affidavit of Rueben Freed—evidence of use of route.

[fol. 104] Affidavits of Morris Glickman and Jacob Vangrofsky—certification of all the foregoing evidence.

Certificates of ownership of Morris Glickman, Herman Trevax, Jacob Vangrofsky, and Murray Galley.

Post-cards of Crescent Mountain Service showing phone-number stated by Telephone Company to have been in use during 1934.

Statements of Michael E. Nial, insurance agent, regarding past insurance.

[fol. 105] STATE OF NEW YORK,
County of New York, ss:

JACOB VANGROFSKY, being duly sworn, deposes and says:

I reside in the county of Bronx, city and state of New York and am a partner with Herman Trevax, Murray Galley and Morris Glickman in the business of transporting passengers between Bronx, N. Y., and points in Sullivan and Ulster Counties, New York by way of New Jersey. We operate under the trade name of Crescent Mountain Service.

It is our intention to change the name of "Crescent Mountain Service" to "Crescent Cadillac Lines". This change we intend to put on record within the coming week by filing of a certificate of doing business. We are therefore submitting certificate of insurance in conformance with the Interstate Commerce Commission regulation in the name of Crescent Cadillac Lines.

This change of name does not in any way change the parties in interest but is being done for the sake of a better business name.

Jacob Vangrofsky.

Sworn to before me this 15th day of January, 1938.
Milton Cotton, Notary Public, Westchester Co.

[fol. 106] New York Telephone Company

January 10, 1938.

This is to certify that the Crescent Mountain Service under the name of Morris Glickman had telephone service from 6/26/34 to 9/18/34. Telephone number Fallsburgh 186 W.

New York Telephone Co., A. Branch, Repr.

[fol. 107] STATE OF NEW YORK,
County of New York:

Reuben Freed, being duly sworn, deposes and says: I am the owner of Red Apple Rest, located in South Field, New York and have been operating a restaurant and gas station on said location under said name since 1930. I have known Jacob Vangrofsky, Morris Glickman, Murray Galley and Herman Trevax since 1933. They have been customers of mine in the purchase of gas and oil during 1933 and 1934. I have been doing business with Jacob Vangrofsky, Morris Glickman, Murray Galley and Herman Trevax during 1933 and 1934 when they operated under the trade name of Crescent Mountain Service. From personal observations and conversations had with passengers in their automobiles I know that they are engaged in the business of transporting passengers to and from points in Sullivan and Ulster Counties. My records show that they were engaged in this business during the years 1933 and 1934. During the periods of that year from May through September, their business being chiefly that of transporting residents of Bronx and New York City to and from summer resorts located in Sullivan and Ulster Counties. I am familiar with the various means that are used be people in traveling to and from these various summer resorts and know that the transportation facilities supplied by Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as the Crescent Mountain Service is a most convenient and necessary one for people using these resorts. The reason for their —— service is that they transport people to hotels located in all roads and by-roads, obviating the necessity of their passengers having to use foot or other extraordinary means to get to their actual [fol. 108] destination. These observations of mine are based upon conversations had personally with passengers in their automobiles and in other automobiles including buses.

Red Apple Rest, Inc. Reuben Freed, Pres.

Sworn to before me this 10th day of January, 1933.
Joseph E. Kelly, Notary Public.

[fol. 109] STATE OF NEW YORK,
County of Sullivan, ss:

William J. Cairns being duly sworn, deposes and says: I reside in the Town of Bloomingburg, New York, and have resided there since——. I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service since 1932 and they have been customers of mine since that time up to and including September, 1937. I am the owner of Lakeside Garage located at Bloomingburg, New York and my connection with the aforesaid Crescent Mountain Service has been that of repairing and storaging their automobiles. Our business connections have taken place during the summer months of each year since 1932 and I have also sold them gas and oil during the aforesaid periods. The Crescent Mountain Service owns and operates 7 - 7 passenger Cadillac Sedans. Their business is that of transporting passengers from Bronx, New York to various points of Sullivan and Ulster Counties. Since May, 1932, I have been paid by Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service for the services which I rendered to them and for the supplies which I sold them.

William J. Cairns.

Sworn to before me this 10th day of January, 1938.
Clarence B. Newhouse, Notary Public.

[fol. 110] STATE OF NEW YORK,
County of Sullivan, ss:

Arthur Gillespie being duly sworn, deposes and says: I reside in the Town of Bloomingburg, New York and have resided there for the last few years. I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman since 193— and know that they have been continuously since that time doing business under the name of Crescent Mountain Service. I have been employed since that time by William Cairns, who is the owner of Lakeside Garage in Bloomingburg. I have been doing mechanic repairs for Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service since 193— up to and including the

summer of 1937. From conversations had during that period with the owners and operators and passengers of cars owned by Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman doing business as Crescent Mountain Service, I know that they are in the business of transporting passengers between New York City and points in Sullivan and Ulster Counties. At various times prior to June 1, 1935 and since that time I have been personally called to make repairs for them in Wurtsboro, Rock Hill, Harriman and Goshen and various other points in Sullivan and Ulster Counties. From conversations with passengers in the other cars, I know that the said passengers were traveling between points in New York City and Sullivan and Ulster Counties. From my knowledge of the summer resorts at Sullivan and Ulster Counties to and from which the aforesaid passengers were traveling I know that the locations are such that the method of travel employed by the Crescent Mountain Service is the most convenient one available and possible.

Arthur Gillespie.

Sworn to before me this 10th day of January, 1938.
Clarence B. Newhouse, Notary Public.

[fol. 111] State of New York,
County of Sullivan, ss:

Bella Sussman, being duly sworn, deposes and says: I am the owner of the Onyx Club located in Woodbourne, New York and have owned this Club for the past ten (10) years. During this time I have been transported to New York City from my Club in Woodbourne to New York City and from New York City to my Club by Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service. Several times during each summer of 1932, 1933, 1934, 1935, 1936 and 1937 people employed by me including waiters and entertainers, musicians, cooks, have been transported by Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service from New York City to my Club and from my Club to New York City during the aforementioned period. Many guests at my night club have been transported by them in the same

manner. During the summer months of 1932, 1933, 1934, Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service had their place of business in Woodbourne, New York and had large signs advertising the fact that they transported passengers from Sullivan and Ulster Counties to New York City and from New York City to Sullivan and Ulster Counties hung in front of their place of business and on their cars parked in front of their business. They have had a telephone number in Woodbourne, New York and also in Bronx, New York.

Bella Sussman.

Sworn to before me this 10th day of January, 1938.
Samuel Paushi, Notary Public.

[fol. 112] State of New York,
County of Sullivan, ss:

Harry K. Cohen, being duly sworn, deposes and says: I reside in the hamlet of Woodbourne, N. Y., and am the owner of The Woodland Hotel at said address. I have resided at Woodbourne, N. Y., for over fifteen years, and have been in the hotel business during all of said times. I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman doing business as Crescent Mountain Service since May, 1932. Their business has been the transportation of guests of mine from New York City to my hotel and from my hotel to New York City. They have been engaged in this business from 1932 up to and including September 1937, operating only during the summer months from late May to late September. I have during said period several times during the summer months called their office located in Woodbourne, New York.

Harry K. Cohen.

Sworn to before me this 10th day of January, 1938.
Samuel Paushi, Notary Public.

[fol. 113] State of New York,
County of Sullivan, ss:

Moe Bail, being duly sworn, deposes and says: I reside in the Town of Woodbourne, New York. That I am one

of the owners of Bail's Oliver Hill Hotel located in the same town. I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service since 1932. We have engaged their cars on numerous occasions for the transportation of guests in our hotel to New York City and from New York City to our hotel, during the summer months from late May to late September. I have also been transported by them from my hotel to New York City and from New York City to my hotel. During my passage I noticed that they have picked up passengers from various other summer resorts located throughout Sullivan County and transported them to New York City and also that they have transported passengers from New York City to various other summer resorts in Sullivan County.

Moe Bail.

Sworn to before me this 10th day of January, 1938.
Samuel Paushi, Notary Public.

[fol. 114] State of New York,
County of New York:

Issi Feldman, being duly sworn, deposes and says: I reside and own real estate in the Town of Woodridge, New York. I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service since June 1932. They have, to my knowledge, been engaged in the business of transporting passengers between New York City and Sullivan and Ulster Counties since 1932. They operate seven 7 passenger Sedans and carry passengers to and from summer hotels located in Sullivan and Ulster Counties. I am the owner of the Flower Lake House located in Woodridge, New York. Guests who rent rooms in my hotel were brought to my hotel by the aforementioned, Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service, in cars owned by them and guests were likewise transported from my hotel back to their homes in New York. The aforesaid Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman have been engaged in this type of transportation to and from my hotel since 1932

during the summer months from late May to late September, operating continuously during said summer months. From conversations with people who travel in said auto mobiles operated by said Crescent Mountain Service and from my own experience in traveling in other cars to and from New York City, I sincerely believe that their mode of transportation is extremely necessary and convenient both for my own and my guests needs.

Issi Feldman.

Sworn to before me this 10th day of January, 1938.
Milton Cotton, Notary Public, Westchester Co.
Ctf. filed N. Y. Co. #781. Comm. exp. 3/30/39.

[fol. 115] STATE OF NEW YORK,
County of Bronx, ss:

Israel Levine, being duly sworn, deposes and says: I am the owner of a store located at #531 East 169th Street, Bronx, N. Y. In May, 1934, Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman rented my store as a place of business for the purpose of using it as a station for transporting people from New York City to various points in Sullivan and Ulster Counties and for transporting people from Sullivan and Ulster Counties to New York City. They hung large signs in front of said store advertising the fact that they were running their automobiles to said points. A list of said points advertised are as follows:

Accord, Bethel, Bushville, Bradley, Dairyland, Ellenville, Fallsburg, Fosterdale, Ferndale, Greenfield Park, Glenwild, Hurleyville, Harris, Jeffersonville, Kiamesha, Kerhongson, Kenoza Lake, Livingston Manor, Luzon, Loch Sheldrake, Lake Huntington, Liberty.

During said year of 1934, 1935, 1936 and 1937, they used my store for said purpose of taking passengers for transportation to the said points in Sullivan and Ulster Counties for from Sullivan and Ulster Counties to New York City. They own and operate 7 - 7 passenger Cadillac Sedan cars which they use for said purpose. I have personally seen them arranging for said trips with passengers and driving their cars away and from conversations had with passen-

gers I know that they were going to points in Sullivan and Ulster Counties.

Israel Levine.

Sworn to before me this 14th day of January, 1938.
Jacob Tauss, Notary Public, #6 Bronx County.
Comm. exp. 3/30/38.

[fol. 116] STATE OF NEW YORK,
County of Bronx, ss:

William Klumpp, being duly sworn, deposes and says: I am the owner of an auto service garage at 3604-3rd Avenue, Bronx, N. Y. I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service since 1933. Since that time the aforesaid Crescent Mountain Service operated 7 - 7 passenger Cadillac Sedans, engaged in the business of transporting passengers from New York City to points in Sullivan and Ulster Counties and return. During said time I have been employed by them for the purpose of making mechanical repairs to their automobiles and also storaging their automobiles. I have been paid for such work during the summers of 1934, 1935, 1936, 1937. During 1934 I have had occasion to go into the State of New Jersey in order to assist them in bringing back a car which had been disabled on the road. From conversations with passengers and people in the vicinity of #531 East 169th Street, I know that during the months from late May to late September they have been engaged in the business of transporting passengers from New York City to Sullivan and Ulster Counties and return. I know that they have been engaged in that business since 1934 up to and including late September, 1937.

William Klumpp.

Sworn to before me this 13th day of January, 1938.
Jacob Tauss, Notary Public, #6 Bronx County.
Comm. exp. 3/30/38.

[fol. 117] STATE OF NEW YORK,
County of Sullivan, ss:

Clarence B. Newhouse being duly sworn, deposes and says: I reside in the Town of Bloomingburg, N. Y. I am an insurance broker and Justice of the Peace in Blooming-

burg, N. Y. I have known Jacob Vangrofsky, Herman Trevax, Morris Glickman, and Murray Galley, doing business as Crescent Mountain Service since the Spring of 1934. During the summer of 1934 they were engaged in the business of transporting passengers from New York City to various points in Sullivan and Ulster Counties. During the summer of 1934, as Justice of the Peace of Bloomingburg, N. Y. it was brought to my attention by State troopers to check the insurance coverage on all automobiles transporting passengers through Bloomingburg, N. Y. At that time I inspected the insurance carried by Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman who were then doing business under the trade name of Crescent Mountain Service. The insurance which they carried at that time was proper insurance and adequate for the purpose which I then required. Copies of insurance policies carried by them were submitted to me and said policies met all requirements of the State of New York. From information given to me by the policemen patrolling the highway in and around the vicinity of Bloomingburg I know that Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service were engaged in the transportation of passengers from Bloomingburg, New York to various points in Sullivan and Ulster Counties by way of highways #17 in New York and highways #2 and #4 in New Jersey.

I have been a Justice of the Peace in the Town of Bloomingburg, New York since 1929 and none of the aforemen-
[fol. 118] tioned persons doing business as Crescent Mountain Service or employees of theirs have ever been brought before me on any sort of criminal charge regarding the driving and operation of their vehicle.

Clarence B. Newhouse.

Sworn to before me this 10th day of January, 1938.
James T. Meiklejohn, Notary Public.

[fol. 119] Docket #MC 78980

STATE OF NEW YORK,
County of Bronx, ss:

Adela Dingenthal being duly sworn, deposes and says: That I reside at 414 E. 169 St., Bronx, City of N. Y. C., State of N. Y.

That I know Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley and have known them since 1933. I know that they operate under the trade name of Crescent Mountain Service and that they are engaged in the business of transporting passengers from Bronx, New York to points in Sullivan and Ulster Counties in New York State using a route through the State of New Jersey. In the summer of 1933 and in the summer of 1934 I hired the aforesaid persons to transport me and my family from their office located at #531 East 169th Street, Bronx, N. Y. to Accord in the County of Ulster, New York. That thereafter and during said summer the aforesaid company did transport me and my family in one of their cars to Accord, in the County of Ulster, State of New York. That after bringing my family up to Accord, County of Ulster, State of New York, I engaged the aforesaid Crescent Mountain Service operated by Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley to transport me back to Bronx, New York. That during the said summers of 1933 and 1934 I was transported by said Crescent Mountain Service operated by the said Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley several times between Bronx, New York and Accord, County of Ulster, State of New York, using a route in New Jersey in order to get to the point of destination. A specific [illegible] [fol. 120] upon which I travelled going back and [illegible] from and to the aforementioned points were as follows:

From New York City to Fort Lee, New Jersey via George Washington Bridge

From Fort Lee, New Jersey to Bergenfield, New Jersey via Highland, New Jersey, #4

From Bergenfield, New Jersey to Suffern, New York via New Jersey #2

From Suffern to Wurtsboro via Route 17

From Wurtsboro, New York to Accord, via route 209, N. Y.

On return from Accord to Bronx, N. Y., the same route was used. My family and myself have been using Crescent Mountain Service, operated by Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley since 1933 up to and including the summer of 1937 in going to and from Accord, N. Y. Riding with us at the times that we were transported to Accord by the aforementioned Cres-

cent Mountain Service were other passengers who were transported to various other points in Sullivan and Ulster Counties. I specifically remember other passengers being taken to Summitville, Phillipsport, Ellenville, Spring Glen, Napanoch and Kerhonkson.

My family and I have personally found that this method of transportation is most convenient and the most economical for our purpose and that we would be greatly prejudiced if we were unable to travel to our summer resort by this means. The service has always been safe, comfortable and convenient. I have no personal interest in making this affidavit other than the fact that I would be greatly inconvenienced if this service were withdrawn.

Adela Dingenthal.

Sworn to before me this 14th day of January, 1938.
Jacob Tauss, Notary Public, #6 Bronx County.
Comm. exp. 3/30/38.

[fol. 121] Docket #MC 78980

State of New York,
County of Bronx, ss:

Edna Livingston, being duly sworn, deposes and says: That I reside at 1372 Franklin Ave., City of Bronx, State of New York.

That I know Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley and have known them since 1933. I know that they operate under the trade name of Crescent Mountain Service and that they are engaged in the business of transporting passengers from Bronx, New York to points in Sullivan and Ulster Counties in New York State using a route through the State of New Jersey. In the summer of 1933 and in the summer of 1934 I hired the aforesaid persons to transport me and my family from their office located at #531 East 169th Street, Bronx, N. Y. to North Branch, in the County of Sullivan, New York. That thereafter and during said summer the aforesaid company did transport me and my family in one of their cars to North Branch, in the County of Sullivan, State of

New York. That after bringing my family up to North Branch, County of Sullivan, State of New York, I engaged the aforesaid Crescent Mountain Service operated by Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley to transport me back to Bronx, New York. That during the said summers of 1933 and 1934, I was transported by said Crescent Mountain Service operated by the said Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley several times between Bronx, New York and North Branch, County of Sullivan, State of New York, using a route in New Jersey in order to get to the point of destination. A specific route upon which I travelled going [fol. 122] back and forth from and to the aforementioned points was as follows.

From New York City to Fort Lee, New Jersey via George Washington Bridge

From Fort Lee, New Jersey to Bergenfield, New Jersey via Highland, New Jersey #4

From Bergenfield, New Jersey to Suffern, New York, via New Jersey #2

From Suffern to Monticello vis Route 17

From Monticello, New York to North Branch, N. Y., via Route 17 B

On return from North Branch, New York to Bronx, N. Y., the same route was used. My family and myself have been using Crescent Mountain Service, operated by Jacob Vangrofsky, Morris Glickman, Herman Trevax and Murray Galley since 1933 up to and including the summer of 1937 in going to and from North Branch, New York. Riding with us at the times that we were transported to North Branch, New York by the aforementioned Crescent Mountain Service were other passengers who were transported to various other points in Sullivan and Ulster Counties. I specifically remember other passengers being taken to Kenoza Lake, Jeffersonville, White Lake, Mongaup Valley and Swan Lake.

My family and I have personally found that this method of transportation is most convenient and the most economical for our purposes and that we would be greatly prejudiced if we were unable to travel to our summer resort by this means. The service has always been safe, comfortable and convenient. I have no personal interest in making this

affidavit other than the fact that I would be greatly inconvenienced if this service were withdrawn.

Mrs. Edna Livingston.

Sworn to before me this 14th day of January, 1938.
Jacob Tauss, Notary Public, #6 Bronx County.
Exp. 3/30/38.

[fol. 123] State of New York,
County of Bronx, ss:

Harris Trevax, being duly sworn, deposes and says:

That I reside at 1372 Franklin Avenue, Borough of Bronx, City and State of New York.

That from 1924 to 1934 I was the owner of a garage located at 3604 Third avenue, Borough of Bronx, City and State of New York, which I operated under the name of Crescent Garage. I operated a general garage business from that address.

In the summer of 1928, my son, Herman, conceived of the idea of transporting passengers from Bronx, N. Y. to the summer resorts in Sullivan and Ulster Counties. He purchased a seven-passenger Buick, procured omnibus license plates, and proceeded to carry out this business. He used my garage at the above address as his main station. My wife and I helped him out by answering phone calls and booking work. I charged him no rent for this use. Attached hereto is sample card which he distributed to prospective customers. The original telephone number in the upper left hand corner was the telephone number of my garage.

In 1930, Murray Galley joined my son in this enterprise and Murray Galley also purchased a seven-passenger car for the purpose of transporting passengers from Bronx, N. Y. to and from Sullivan and Ulster Counties.

In 1932, Morris Glickman also purchased an automobile and joined Murray Galley and my son in the business of transporting passengers between Bronx, N. Y. and Sullivan and Ulster Counties.

[fol. 124] In 1933, Jacob Vangrofsky, also purchased an automobile and joined Morris Glickman, Murray Galley, and my son in the business of transporting passengers between Bronx, N. Y. and Sullivan and Ulster Counties.

During all of this time, my garage was used as the station for their operations. In 1934, I sold my garage, as a result of which, the partnership of Morris Glickman, Murray Galley, Jacob Vangrofsky and my son moved their station aroung the corner to 531 East 169th St., Bronx, N. Y.

Sometime, in 1932, I consented to allow the partnership to use the name of Crescent Mountain Service, under which name they have since been operating.

Harris Trevax.

Sworn to before me this 14th day of January, 1938.
Jacob Tauss, Notary Public, #6 Bronx County.
Comm. exp. 3/30/38.

Tel [illegible]

HERMAN TREVAX

DAILY TRIPS to and from MOUNTAINS

at the LOWEST RATES

[illegible]

Phone Fallsburg 186 W

CRESCENT -- MOUNTAIN -- SERVICE

7 Passenger Cars

TO NEW YORK

State of New York }
County of Bronx } ss.

Albert Baron, being duly sworn deposes and says:

I reside in Bronx, New York and am in the printing business, having been so engaged for the past 10 (ten years) with a place of business at 555 E. 169th Street, Bronx, N.Y.

In May, 1934, I was employed by Jacob Vangrofsky, Herman Trevis, Murray Gilday and Morris Glickman, doing business as Crescent Mountain Service to print several of the signs similar to the one on the reverse side of this affidavit. I printed the one on the reverse side and many others and Crescent Mountain Service paid me for them. I also printed business cards and post-cards for them at the same time

Albert Baron

Sworn to before me this
14th day January, 1938.

Notary Public
#6 Bronx County
Comm. Exp. 3/30/38

7 PASSENGER CARS 7

LEAVING DAILY TO ALL PARTS OF THE

MOUNTAINS AT LOWEST PRICES

Monticello	*Liberty*	*Ellinville*
Ferndale	*Swan Lake*	*Kerhonkson*
Loch Shedrake	*Fallsburg*	*Accord*
Parksville	*Livingston Manor*	*Kiamicha*

FROM YOUR HOME TO YOUR HOTEL

Boarding and Rooming Accomodating if Desired

Please call to see us at our residence about reservation

Name..... Address.....

Date..... Time..... Apt.....

Crescent Mountain Service 531 E. 169th St.

Tel JE[illegible]e 6-8445-8451 Mountain Tel. Fallsburg 186 W [illegible]ronx, N. Y.

Protestant will appear and give evidence in support of this protest in the event of a hearing on applicant's application. Check(X)

THE PROTESTANT SHOULD SUBMIT ON SEPARATE SHEETS ATTACHED TO THIS PROTEST DETAILED FACTS IN SUPPORT OF ANY OF THE ABOVE GROUNDS UPON WHICH PROTESTANT RELIES.

PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY

By Leland Taliaferro
Protestant. (~~Practitioner~~)

Address: 80 Park Place (Street), Newark (City), New Jersey (State)

County of Essex)
) ss.
State of New Jersey)

Leland Taliaferro, being duly sworn deposes and says: That he ~~is the protestant (or one of the protestants)~~ is the Real Estate and Tax Attorney of the Public Service Interstate Transportation company, protestant); that he has read the foregoing protest and knows the contents thereof and that the same, including the contents of statements attached thereto are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

Leland Taliaferro.

Subscribed and sworn to before me this 29th day of November, 1937.

_____, ~~Clerk~~

Anne M. Marrs
(Notary Public)

NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY [illegible] 1940

133

Crescent Mountain Service

531 East 169th St.

Bronx, N[redacted] Y.

129

7 PASSENGER CARS 7

LEAVING DAILY TO ALL PARTS OF THE

MOUNTAINS AT LOWEST PRICES

Monticello	*Liberty*	*Ellinville*
Ferndale	*Swan Lake*	*Kerhonkson*
Loch Shedrake	*Fallsburg*	*Accord*
Parksville	*Livingston Manor*	*Kiamjcha*

FROM YOUR HOME TO YOUR HOTEL.

Boarding and Rooming Accomodating if Desired

Please call [illegible] about reservation

Name ..... Address .....

Date ..... Time ..... Apt .....

Crescent Mountain Service 531 E. 169th St.

Tel. JEr[illegible] 6-8445 8451 Mountain Tel. Fallsburg 186 W [illegible]ux, N. Y.

Place
Stamp
Here

Crescent Mountain Service

531 East 169th St.

Bronx, N. Y.

131

// Fate no 78980

2822881 NOV3037 326851

INTERSTATE COMMERCE COMMISSION
RECEIVED
DEC 1 1937
SECTION OF CERTIFICATES & INS.

PROTEST OPPOSING CERTIFICATE OR PERMIT UNDER THE "GRANDFATHER CLAUSE" OF MOTOR CARRIER ACT, 1935

78980

to

CRESCENT MOUNTAIN SERVICE
Name of Applicant

INTERSTATE COMMERCE COMMISSION
NOV 30 1937
SECTION OF MAILS AND FILES

To the Bureau of Motor Carriers,
Interstate Commerce Commission,
Washington, D. C.:

Whereas the undersigned protestant is informed that CRESCENT MOUNTAIN SERVICE, hereinafter referred to as the "applicant", whose principal place of business is in the City of Bronx, State of New York, has applied to the Interstate Commerce Commission for (X) a Certificate of Public Convenience and Necessity as a common carrier, or (_) a Permit as a contract carrier of (X) Passengers or (_) Property (check whichever is applicable), under the "Grandfather clause" of Section 206 (a) or 209 (a) of the Motor Carrier Act, 1935:

The protestant hereby objects to the granting of such application, for the following reasons:

(Protestant will check the applicable reason or reasons)

(_) Because neither the applicant nor its predecessor in interest was in bona fide operation on the date which determined eligibility for rights under the "grandfather" provisions, to-wit, June 1, 1935, for a common carrier or July 1, 1935, for a contract carrier.

MOUNTAIN SERVICE, hereinafter referred to as the "applicant", whose principal place of business is in the City of Bronx, State of New York, has applied to the Interstate Commerce Commission for (X) a Certificate of Public Convenience and Necessity as a common carrier, or (_) a Permit as a contract carrier of (X) Passengers or (_) Property (check whichever is applicable), under the "Grandfather clause" of Section 206 (a) or 209 (a) of the Motor Carrier Act, 1935:

The protestant hereby objects to the granting of such application, for the following reasons:

(Protestant will check the applicable reason or reasons)

(_) Because neither the applicant nor its predecessor in interest was in bona fide operation on the date which determined eligibility for rights under the "grandfather" provisions, to-wit, June 1, 1935, for a common carrier or July 1, 1935, for a contract carrier.

(X) Because the operation of applicant, on whichever of such dates determines its eligibility, was not conducted over the entire route or within the entire territory claimed in the application.

(_) Because since said date determining eligibility, applicant or its predecessor in interest has not operated continuously over all or part of the route or territory described in the application.

(_) Because the type of service rendered by applicant or the nature and extent of the business of applicant, upon whichever of such dates determines its eligibility, or between such date and the filing of said application, was not as claimed in the application.

Protestant merely requests restriction on business between New York City and points in Bergen County, New Jersey

( ) Because of the existence of some other fact or circumstance, not hereinabove indicated which may properly be raised in opposition to the granting of said application, a more detailed statement of which ground is attached hereto.

The protestant is interested in this matter because

it operates in regular service between New York City and points in Bergen County, New Jersey

(Here state briefly the position and interest of protestant in the application)

Protestant will appear and give evidence in support of this protest in the event of a hearing on applicant's application. Check(X)

THE PROTESTANT SHOULD SUBMIT ON SEPARATE SHEETS ATTACHED TO THIS PROTEST DETAILED FACTS IN SUPPORT OF ANY OF THE ABOVE GROUNDS UPON WHICH PROTESTANT RELIES.

PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY

By Leland Taliaferro
Protestant. (~~Practitioner~~)

Address: 80 Park Place (Street), Newark (City), New Jersey (State)

County of Essex)
) ss.
State of New Jersey)

Leland Taliaferro, being duly sworn deposes and says: That he ~~is the protestant (or one of the protestants) herein~~ is the Real Estate and Tax Attorney of the Public Service Interstate Transportation company, protestant); that he has read the foregoing protest and knows the contents thereof and that the same, including the contents of statements attached thereto are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

[fol. 134] Restrictions Requested

I. C. C. Docket No. 78980

MC 5A

Bureau of Motor Carriers, Interstate Commerce Commission, Washington, D. C.

GENTLEMEN:

The following is the result of our investigation of application filed under the Grandfather clause:

1. Name and Address of Applicant: Crescent Mountain Service, 531 East 169th St., Bronx, N. Y.

2. Interstate Certificates and Permits:

Answer the following questions as to each State requiring an interstate certificate or permit in or through which the applicant is applying to operate:

(a) Does applicant possess an Interstate certificate or permit under the laws of the State of ——? — Yes — No.

If answer is "Yes" give number and character of certificate or permit, i.e., common carrier, charter carrier. (Group and party, sightseeing.)

(b) On what date was such certificate or permit issued? ——

Attach copy of Commission order if possible. If Commission order is attached, omit answers to question (d).

(d) Does the route or routes applied for by the applicant correspond with route or routes authorized by his certificate or permit? — Yes — No. If not, how does it differ?

(e) Has applicant been denied an interstate certificate or permit? — Yes — No.

If so, give State Commission docket number and date of order: ——.

[fol. 135] 3. Type of Service and Routes and Territory Served.

(A) Common Carrier: Answer the following questions as to each route and territory applied for:

(1) Whether or not applicant operated over the route or in the territory prior to June 1, 1935, and has continued to

operate since June 1, 1935? If answer is "No," state what part of route or territory applicant did not operate:

This applicant is believed to have operated irregularly and seasonally from New York City to points in Sullivan and Ulster Counties, N. Y. We are informed that the applicant has failed to comply with certain laws in the State of New Jersey covering passenger transportation and this operation is believed to be illegal.

(2) Frequency of operation (daily, twice a day, etc.)?

(3) Did applicant serve all intermediate points? (If answer is "No," indicate exceptions.)

(B) Charter Carrier: (Group and Party, Sightseeing).

(1) What routes or within what territory is applicant applying for that he did not operate over or within prior to July 1, 1935?

4. Remarks: ——.

The above statements are true and correct to the best of my information and belief:

Motor Carrier Committee, Official Classification Territory Lines, A. R. Eldred, Manager.

[fol. 136] [Stamp:] Interstate Commerce Commission. Received Feb. 28, 1938. Section of Certificates & Ins.

Feb. 11, '38 363510

Interstate Commerce Commission, Bureau of Motor Carriers, Washington, D. C.

Attention: Mr. W. Y. Blanning, Director

GENTLEMEN:

Re: Application #78980. Finance #156066

We, Jacob Vangrofsky, Herman Trevax, Murray Galley, and Morris Glickman, d/b/a Crescent Mountain Service, application #78980, desire to adopt and use the trade name of "Crescent Cadillac Lines":

Dated at New York, N. Y., February 5, 1938.

Jacob Vangrofsky, Morris Glickman, Herman Trevax, Murray Galley.

GWY:im

[fol. 137] February 25, 1938.

Please refer to file Finance: #156,066.

Mr. Milton Cotton, Cotton & Freundlich, Counselors at Law, 1440 Broadway, New York, N. Y.

Dear Mr. Cotton:

Receipt is acknowledged of your letter of recent date, and statement over signatures of Jacob Vaugrofsky, Herman Trevax, Murray Galley, and Morris Glickman, d/b/a Crescent Mountain Service, application No. 78980, indicating that they desire to adopt the trade name of "Crescent Cadillac Lines".

We are advising our Sections of Certificates and Insurance and Traffic of your client's desire to effect the change in trade name referred to above.

Very truly yours, W. Y. Blanning, Director.

Cy—Mr. R. K. Hagarty, District Director, District No. 2.

[fol. 138] Order SC-51

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 3rd day of March, A. D. 1938.

No. MC 35502—D. Carl Musser, Mechanicsburg, Pennsylvania.
No. MC 35905—David E. Keefer, Needmore, Pennsylvania.
No. MC 38373—Russell E. Snyder, Doing Business as Russell E. Snyder Ice & Coal Dealer, Shickshinny, Pennsylvania.
No. MC 39241—John H. Miller, Lykens, Pennsylvania.
No. MC 44272—Kaufman Circle Express Co., Inc., New York City, New York.
No. MC 44788—Raymond Matheny, Webster Springs, West Virginia.
No. MC 44833—Norman M. Eckrote, Drums, Pennsylvania.
No. MC 45273—Howard S. Weikel, Junedale, Pennsylvania.
No. MC 47770—William A. Ruth, Doing Business as Ruth Trucking Co., East Berlin, Pennsylvania.
No. MC 47867—Lincoln Habblett, Dallas, Pennsylvania.

No. MC 47868—Claude S. Hall, Fairdale, Pennsylvania.
No. MC 47905—Jaba Trucking Corp., Brooklyn, New York.
No. MC 49042—Joseph Hugert, Ashley, Pennsylvania.
No. MC 49483—Ernest Myers, Wapwallopen, Pennsylvania.
No. MC 49164—Stanley J. Zukosky, Ashley, Pennsylvania.
No. MC 51664—Frank Petruzzi, Hazelton, Pennsylvania.
No. MC 51667—Alfred S. Perry, Worcester, Massachusetts.
No. MC 52178—Louis Wolff, New York City, New York.
No. MC 52194—R. W. Wentz, Doing Business as R. W. Wentz Furniture Co., Gettysburg, Pennsylvania.
No. MC 54334—Harry W. Kosier, Lykens, Pennsylvania.
No. MC 55011—Truman Ernest Horner, Highspire, Pennsylvania.
No. MC 55638—L. A. Stine, Freeland, Pennsylvania.
No. MC 56102—Nathan Lyons, Cold Spring, New York.
No. MC 56117—Anna D. Lorentz, Sutton, West Virginia.
No. MC 56228—Andy Kovacic, Forest City, Pennsylvania.
No. MC 56237—Gurney E. Knorr, Lykens, Pennsylvania.
No. MC 56494—Albert Kenthack, Mountain Top, Pennsylvania.
No. MC 59515—Chester Marshall & John Kamor, Doing Business as Chester Marshall, Wyoming, Pennsylvania.
No. MC 60487—L. B. Smith, Mount Union, Pennsylvania.
No. MC 37067—Vincent—a Nesi, Boonton, New Jersey.
[fol. 139] No. MC 61835—John & Merrill Covalt, Needmore, Pennsylvania.
No. MC 62052—Orville P. Adney, Doing Business as Delta Fast Freight Line, Memphis, Tennessee.
No. MC 62330—Wayne Kinner, Montrose, Pennsylvania.
No. MC 62487—O. S. Forshay, Huntingdon, Pennsylvania.
No. MC 64229—A. R. Wilcox, Montrose, Pennsylvania.
No. MC 64507—Elwyn A. Wagner, Kankakee, Illinois.
No. MC 65168—John Rauert, Doing Business as J. R. Trucking, New York City, New York.
No. MC 68410—S. J. Mays, Maysville, Oklahoma.
No. MC 70756—Howard King, Springwater, New York.
No. MC 72067—Elmer H. Gilbert, Doing Business as Momence Delivery Service, Momence, Illinois.
No. MC 77991—Herman Adelson, Chicago, Illinois.
No. MC 78980—Herman Trevax, Jacob Vangrofsky, Murray Galley, Morris Glickman, Doing Business as Crescent Mountain Service, Bronx, New York.
No. MC 79753—Horace M. Schaeffer, Fleetwood, Pennsylvania.

No. MC 80475—Herbert L. Anderson, Doing Business as Superior Teaming Co., Chicago, Illinois.
No. MC 79948—T. P. Jones, Wainwright, Oklahoma.
No. MC 80850—Charles Ahrens, Doing Business as Chas. Ahrens & Sons, Chicago, Illinois.
No. MC 80852—Edward R. Alban, Doing Business as E. R. Alban Cartage Contractor, Chicago, Illinois.
No. MC 87316—John Kraemer, Doing Business as Active Messenger Service, Chicago, Illinois.
No. MC 61436—B. V. Johnson, Oklahoma City, Oklahoma.
No. MC 62670—J. C. Parker, Claremore, Oklahoma.
No. MC 62877—Cruthfield and Beard, a Partnership, Winston-Salem, North Carolina.

It appearing, That the above-named applicants made application for appropriate authority to continue to operate as motor carriers or brokers, under the Motor Carrier Act, 1935;

It further appearing, That said applicants have refused or failed to comply with various requests to furnish the facts and evidence necessary to the proper disposition of their applications; therefore,

It is ordered, That the said applicants shall answer to this Commission within thirty days from the date thereof, in a writing verified under oath, showing cause why their applications should not be dismissed for want of prosecution.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

MAR 1938 385219

MILTON COTTON

COUNSELLOR AT LAW

INTERSTATE COMMERCE COMMISSION RECEIVED MAR 10 1938 SECTION OF CERTIFICATES & PERMITS

March 7, 1938.

INTERSTATE COMMERCE COMMISSION RECEIVED MAR 10 1938 SECTION OF MAILS AND FILES

Interstate Commerce Commission,
Division 5,
Washington, D. C.

Gentlemen:

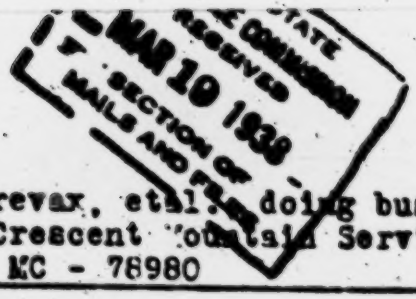
Re: Herman Trevax, etal, doing business as Crescent Mountain Service
MC - 78980

On March 7, 1938, I received from your office an order precluding my client, the above-named from proceeding further with the above application for a permit to operate as a motor carrier, unless proper affidavit were submitted to your office showing cause to the contrary.

On January 15, 1938, I appeared with my client at the District Office at 60 Hudson St., N. Y., and we submitted evidence under the "Grandfather's Clause". My information from the Examiner was to the effect that our evidence was proper and sufficient at that time. I am therefore at a loss to understand why my client was included in your order of March 7.

I am enclosing herewith several original copies

Interstate ommerce Commission,
Division f,
"ashington, D. C.



Gentlemen: Re: Herman Trevax, etal. doing business as Crescent ountain Service
MC - 78980

On March 7, 1938, I received from your office an order precluding my client, the above-named from proceeding further with the above application for a permit to operate as a motor carrier, unless proper affidavit were submitted to your office showing cause to the contrary.

On January 1?, 1938, I appeared with my client at the District office at 60 Hudson St., N. Y., and we submitted evidence under the "Grandfather's Clause". My information from the examiner was to the effect that our evidence was proper and sufficient at that time. I am therefore at a loss to understand why my client was included in your order of March.

I am enclosing herewith several original copies of affidavit and order vacating order # MC - 1 insofar as it concerns my client.

Will you kindly wire me collect at the above address of the signing of the enclosed order or of a refusal so to do so that my client may not be prejudiced because of lack of time.

140

MAR1938 385219

MILTON COTTON
COUNSELLOR AT LAW
1440 BROADWAY
NEW YORK

LACKAWANNA 4-0646

2- I.C.C. - re: Crescent

Thanking you in anticipation of a prompt and favorable response herein,

Very truly yours,

MILTON COTTON

M:M

- - - - - - - - - - - - - - - - - - - -x

In the Matter of the Application of

HERMAN FRIEVAX, JACOB VANGROFSKY, MURRAY GALLEY, MORRIS GLICKMAN, doing business as CRESCENT MOUNTAIN SERVICE - 78980

for authority to continue to operate as motor carriers, under the Motor Carrier Act, 1935.

- - - - - - - - - - - - - - - - - - - -x

State of New York)
County of New York) ss:

JACOB VANGROFSKY, being duly sworn, deposes and says:

That I am a member of the above-mentioned partnership applicant, and am familiar with the above-mentioned proceeding.

That the above applicant was duly notified to appear and submit facts and evidence on January 11, 1938. An adjournment was made to January 15, 1938. On January 15, 1938, MORRIS GLICKMAN and I appeared with our attorney, MILTON COTTON, Esq., at the New York District office of the Interstate Commerce Commission and submitted facts and evidence in support of our application.

That since that time, we applied to the Interstate Commerce Commission for leave to change our trade name to "CRESCENT CADILLAC LINES", and we were advised that said application has been granted.

INTERSTATE COMMERCE COMMISSION
MAR 1 1938

Wherefore I pray that an order be entered herein, vacating order No. 30-51, dated March 3rd, 1938, insofar as it

doing business as CRESCENT
MOUNTAIN SERVICE - 78980

for authority to continue to operate as motor carriers, under the Motor Carrier Act, 1935.

- -x

State of New York)
County of New York) ss:

JACOB VANGROFSKY, being duly sworn, deposes and says:

That I am a member of the above-mentioned partnership applicant, and am familiar with the above-mentioned proceeding.

That the above applicant was duly notified to appear and submit facts and evidence on January 11, 1938. An adjournment was made to January 15, 1938. On January 15, 1938, MORRIS LICHMAN and I appeared with our attorney, MILTON COTTON, ESQ., at the New York District office of the Interstate Commerce Commission and submitted facts and evidence in support of our application.

That since that time, we applied to the Interstate Commerce Commission for leave to change our trade name to "CRESCENT CADILLAC LINES", and we were advised that said application has been granted.

INTERSTATE COMMERCE COMMISSION
MAR 4 1938
CERTIFICATES & INS.

Wherefore I pray that an order be entered herein, vacating order No. 50-51, dated March 3rd, 1938, insofar as it concerns the above-named applicant, and for such other and further relief as in the premises may seem just and equitable.

Jacob Vangrofsky

142

State of New York)
) SS:
County of New York)

JACOB VANGROPSKY, affiant makes oath and says that he is a partner of the applicant, CRESCENT MOUNTAIN SERVICE, applicant for a certificate and/or permit, that he has personal knowledge of the statements made herein, and that all matters herein are a true and correct statement of fact to the best of his knowledge and belief.

Jacob Vangropsky

Subscribed and sworn to before me, a notary public in and for the State and County above named this 15th day of March, 1938. My Commission expires March 30, 1939.

Milton Cotton

MAR 19 '38 385219

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the day of March, A. D. 1938.

- - - - - - - - - - - - - - - - - -x

In the Matter of the Application of

HARMAN FREYAX, JACOB VANGROFSKY, MURRAY GALLEY, MORRIS GLICKMAN, doing business as CRESCENT MOUNTAIN SERVICE - MC 78980

for authority to continue to operate as motor carriers, under the Motor Carrier Act, 1935.

- - - - - - - - - - - - - - - - - -x

It Appearing, That the above-named applicant made application for appropriate authority to continue to operate as motor carriers, under the Motor Carrier Act, 1935;

It further Appearing, That said applicants have complied with request to furnish the facts and evidence necessary to the proper disposition of their application; therefore,

It is ordered, that the order entered herein on the 3rd day of March, 1938, order # MC-51, insofar as it concerns the above-named applicant, be and the same is hereby vacated.

By the Commission, Division 5,

MAY-5'38 413415

...MISSION
...ED
MAY 5 1938
...TION OF
CERTIFICATES AND...

MILTON COTTON
COUNSELLOR AT LAW
1440 BROADWAY
NEW YORK
—
LACKAWANNA 4-0646

INTERSTATE
COMMERCE COMMISSION
RECEIVED
MAY 5 1938
SECTION OF
MAILS AND FILES

May 4, 1938.

Mr. W. Y. Blanning,
Interstate Commerce Commission,
Bureau of Motor Carriers,
Washington, D. C.

Re: Docket No. 531 [illegible]819
78980
Crescent Mountain Service
or Crescent Cadillac Lines

Dear Sir:

Pursuant to your letter dated March 25, 1938, in regard to the above-mentioned applicant, please be advised that pursuant to instructions in said letter, the applicant contacted the New York District office, and thereafter, a hearing was had and evidence submitted relative to the preservation of applicant's rights under the "grandfather" clause. We were advised that we would hear from your office within a short time. This was on April 7, 1938.

Will you be so kind as to advise the writer as to the exact position of the applicant at the present time with regard to when he will receive official plates, or as to whether it is necessary for him to meet some further requirements under the Motor Carrier Act.

per 1

Mr. W. Y. Blanning,
Interstate Commerce Commission,
Bureau of Motor Carriers,
Washington, D. C.

SECTION OF MAILS AND FILES

Re: Docket No. 531-385219
78980
Crescent Mountain Service
or Crescent Cadillac Lines

Dear Sir:

Pursuant to your letter dated March 25, 1938, in regard to the above-mentioned applicant, please be advised that pursuant to instructions in said letter, the applicant contacted the New York District office, and thereafter, a hearing was had and evidence submitted relative to the preservation of applicant's rights under the "grandfather" clause. We were advised that we would hear from your office within a short time. This was on April 7, 1938.

Will you be so kind as to advise the writer as to the exact position of the applicant at the present time with regard to when he will receive official plates, or as to whether it is necessary for him to meet some further requirements under the Motor Carrier Act.

I thank you for your past helpfulness herein, and trust I may receive an immediate favorable reply.

Very truly yours,

MC: my

[fol. 146] Order C-1

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of May, A. D. 1938.

No. MC 78980

Application of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a Partnership, doing business as Crescent Mountain Service, Bronx, N. Y.

After due investigation:

It appearing, That applicant in accordance with the requirements of Section 206, Motor Carrier Act, 1935, including due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order, and that the said applicant or predecessor in interest was in bona fide operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order*, then said applicant shall

show cause, if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

And it is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission. Otherwise such protests shall be denied.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 147] Appendix to the order of the Interstate Commerce Commission, Division 5, dated the 7th day of May, A. D. 1938.

No. MC 78980

Application of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a Partnership, doing business as Crescent Mountain Service, Bronx, N. Y.

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, over the regular route, between fixed termini, and to and from intermediate and off-route points, during the season extending from the 1st of June to the 1st of October, inclusive, is as specified below:

Between New York, N. Y., and Woodbourne, N. Y.:

From New York over George Washington Bridge to Fort Lee, N. J., thence over New Jersey Highway 4 to Bergenfield, N. J., thence over New Jersey Highway 2 to the New Jersey-New York State line, thence over New York Highway 17 to Monticello, N. Y., and thence over New York Highway 42 to Woodbourne and return over the same route.

All intermediate points.

Off-route points: Points and places within 20 miles of Woodbourne.

[fol. 148] BEFORE INTERSTATE COMMERCE COMMISSION

In the matter of the application of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a partnership, doing business as Crescent Mountain Service, Bronx, N. Y.

Docket No. MC 78980

EXCEPTIONS TO AND PETITION TO STAY ISSUANCE OF CERTIFICATE—Filed June 8, 1938

[fol. 149] Comes now the protestants, Yelloway Transportation Corporation, Eastern Capitol Lines, Inc., Flying Eagle Coach Corporation and Inter-City Transportation Co., Inc., in the above entitled proceeding, by their attorney, and respectfully except to the issuance of a certificate of convenience and necessity and specifically pray for a stay of the issuance of the same in its entirety and more particularly as follows.

I

The petitioners object to the issuance of any certificate being granted to the applicants because of the fact that on June 1st, 1935 and since that day, the applicants have not been engaged in a bona fide operation over the route applied for. They have failed to show daily and continuous operations and have failed to submit adequate proof of all the facts which go to constitute a bona fide operation in the territory involved.

II

The petitioners object to the issuance of a certificate because of the following facts which they are in a position to submit proof of if afforded the opportunity:

(a) The partnership of Herman Trevax, Jacob Vangrofsky, Murray Galley and Morris Glickman doing business as Crescent Mountain Service was not in existence and did not operate as such on or before June 1st, 1935 and during the season of 1935.

(b) That no regular route operation over the route as described was operated in the year of 1935.

(c) That no business of any kind was done by the applicant or any of its alleged partners at any time at points

between New York City and Wurtsboro, N. Y. or the so-called "points in the mountains".

(d) That the applicant or any of its alleged partners did not do any business to all of the points and places within 20 miles of Woodbourne, N. Y.

[fol. 150] (e) That the applicant or any of its alleged partners at no time operated between fixed termini.

(f) That at no time did the appellant as a partnership own or operate any motor vehicles of any type.

(g) That at no time has the applicant as a partnership paid road taxes to the State of New Jersey while allegedly operating through that State.

(h) That as a matter of fact one of the alleged partners, Jacob Vangrofsky, never paid mileage tax for the years 1935 and 1936 to the State of New Jersey.

III

The petitioners object to the issuance of a certificate on the further ground that the statements submitted in support of the application and signed by the applicant did not seek any intermediate points and that the order herein exceeds the authority applied for.

IV

The petitioners object to the issuance of a certificate on the further ground that the records of the Commission indicate that the applicants at first failed to submit sufficient proof of operation. That an order to show cause to dismiss was then served upon the applicants. That an appearance was then made by an attorney representing the applicants. That the application was referred back to the District Office and additional proof of operation by affidavits and statements were submitted and that after submission of such affidavits and statements, the order was issued herein. The said affidavits are, in the opinion of the petitioners, false and not the best evidence to submit in support of an application. That the petitioners are entitled to and seek the opportunity of rebutting and proving the falsity of the statements and affidavits submitted.

Wherefore your petitioners respectfully request that the order of June 20th, 1938, be vacated and that the applica-

tion be denied or that the order be stayed pending the assignment of the application to formal hearing to afford the petitioners an opportunity of submitting evidence in respect to the facts stated herein.

Respectfully submitted, Henry P. Goldstein, Attorney for Protestants, Yelloway Transportation Corporation, Eastern Capitol Lines, Inc., Flying Eagle Coach Corporation and Inter-City Transportation Co., Inc. 1450 Broadway, New York City.

June 6, 1938.

[fol. 151] CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing exceptions upon all parties of record in the above entitled proceeding by mailing a copy thereof to each such party.

Dated, New York, June 6, 1938.

Henry P. Goldstein.

[fol. 152] Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 20th day of June, A. D. 1938.

No. MC 78980

Application of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a Partnership, Doing Business as Crescent Mountain Service, Bronx, New York

After due investigation:

It appearing, That applicant in accordance with the requirements of Section 206, Motor Carrier Act, 1935, including due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order, and that the said applicant or predecessor in interest was in bona fide operation in such

manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribing by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto*, and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of the order*, then said applicant shall show cause, if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

It is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificate, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission.

And it is further ordered, That the previous order issued in this proceeding, describing the authority to which applicant has been found to be entitled, upon compliance with the requirements therein specified, be, and it is hereby, vacated and set aside.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 153] Appendix to the Order of the Interstate Commerce Commission, Division 5, Dated the 20th Day of June, A. D. 1938

No. MC 78980

Application of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a Partnership, Doing Business as Crescent Mountain Service, Bronx, New York

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, over the regular route, between fixed termini, and to and from intermediate and off-route points, during the season extending from the 1st of June to the 1st of October, inclusive, is as specified below:

Between New York, N. Y., and Woodbourne, N. Y.:

From New York over George Washington Bridge to Fort Lee, N. J., thence over New Jersey Highway 4 to Bergenfield, N. J., thence over New Jersey Highway 2 to the New Jersey-New York State line, thence over New York Highway 17 to Monticello, N. Y., and thence over New York highway 42 to Woodbourne, and return over the same route.

Intermediate and off-route points within 20 miles of Woodbourne.

[fol. 154] Interstate Commerce Commission, Bureau of Motor Carriers

Docket No. 78980

Public Service Interstate Transportation Company, a Corporation of the State of New Jersey, Petitioner

vs.

Crescent Mountain Service, Respondent

Petition of Protest to Granting of a Certificate as Set Forth in Compliance Order—Filed June 29, 1938

The petition of Public Service Interstate Transportation Company respectfully shows:

1. That the petitioner is a corporation of the State of New Jersey, and is a common carrier lawfully engaged in the interstate transportation of passengers by motor bus

between Bergenfield and Fort Lee, New Jersey and New York City, New York, and intermediate points, and has filed its application with the Interstate Commerce Commission for a certificate of public convenience and necessity to cover such operation, which application has been filed under Docket No. 3647.

2. That respondent is also a common carrier engaged in the interstate transportation of passengers by motor bus, between New York City, New York and Woodbourne, New York, via New Jersey.

3. That on June 20, 1938 a compliance order was issued by the Interstate Commerce Commission, Division 5, setting forth the routes over which the respondent is to receive authority for the transportation of passengers in interstate or foreign commerce.

[fol. 155] 4. That on November 29, 1937 the petitioner filed a protest against the granting of this certificate for the purpose of restricting the applicant from doing any business between New York City and points in Bergen County, New Jersey.

5. That in the description of routes attached to the above mentioned order of June 20, 1938, only State Highways are named and there is nothing to indicate that there would be a restriction on the applicant from doing business between New York City and points in Bergen County, New Jersey.

6. That protection of existing and future operators, the best interests of the industry and the proper regulation of interstate motor bus operations in the congested New York Metropolitan Area require the naming of all streets and highways to be used.

Wherefore, Petitioner prays that the entry of the order in its present form be withheld and that the effective date thereof be deferred until the order has been modified and revised to contain a street by street description of the route of applicant and a restriction on the right of applicant to do business between points in Bergen County, New Jersey and New York City, and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at Newark, N. J., June 24, 1938.

Public Service Interstate Transportation Company,
by Leland Taliaferro, Practitioner.

[fols. 156-157] STATE OF NEW JERSEY,
County of Essex, ss:

Leland Taliaferro, being duly sworn deposes and says: That he is the Real Estate and Tax Attorney of the Public Service Interstate Transportation Company, protestant; that he has read the foregoing petition of protest and knows the contents thereof and the the same are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things he believes them to be true.

Leland Taliaferro.

Sworn and subscribed to before me this 27th day of June, 1938. Anne M. Morris, Notary Public of New Jersey. My Commission expires July 24, 1940. (Seal.)

[fol. 158] BEFORE THE INTERSTATE COMMISSION

In the Matter of the application of HERMAN TREVAX, JACOB VANGROFSKY, MURRAY GALLEY, and MORRIS GLICKMAN, a partnership, doing business as Crescent Mountain Service, Bronx, N. Y.

Docket No. MC 78980

EXCEPTIONS TO AND PETITION TO STAY ISSUANCE OF CERTIFICATE—Filed July 2, 1938

[fol. 159] Comes now the protestants, Hudson Transit Lines and Hudson Transit Corporation in the above entitled proceeding, by their attorney, and respectfully except to the issuance of a certificate of convenience and necessity and specifically pray for a stay of the issuance of the same in its entirety and more particularly as follows.

I

The petitioners object to the issuance of any certificate being granted to the applicants because of the fact that on June 1st, 1935 and since that day, the applicants have not been engaged in a bona fide operation over the route applied for. They have failed to show daily and continuous operations and have failed to submit adequate proof of all the facts which go to constitute bone fide operation in the territory involved.

II

The petitioners object to the issuance of a certificate because of the following facts and they are in a position to submit proof if afforded the opportunity:

(a) The partnership of Herman Trevax, Jacob Vangrofsky, Murray Galley and Morris Glickman doing business as Crescent Mountain Service was not in existence and did not operate as such on or before June 1st, 1935 and during the season of 1935.

(b) That no regular route operation over the route as described was operated in the year of 1935.

(c) That no business of any kind was done by the applicant or any of its alleged partners at any time at points between New York City and Wurtsboro, N. Y. or the so-called "points in the mountains."

(d) That the applicant or any of its alleged partners did not do any business to all of the points and places within 20 miles of Woodbourne, N. Y.

(e) That the applicant or any of its alleged partners at no time operated between fixed termini.

[fol. 160] (f) That at no time did the applicant as a partnership own or operate any motor vehicle of any type.

(g) That at no time has the applicant as a partnership paid road taxes to the State of New Jersey while allegedly operating through that State.

(h) That as a matter of fact one of the alleged partners, Jacob Vangrofsky, never paid mileage tax for the years 1935 and 1936 to the State of New Jersey.

III

The petitioners object to the issuance of a certificate on the further ground that the statements submitted in support of the application and signed by the applicant did not seek any intermediate points and that the order herein exceeds the authority applied for.

IV

The petitioners object to the issuance of a certificate on the further ground that the records of the Commission in-

dicate that the applicants at first failed to submit sufficient proof of operation. That an order to show cause to dismiss was then served upon the applicants. That an appearance was then made by an attorney representing the applicants. That the application was referred back to the District Office and additional proof of operation by affidavits and statements were submitted and that after submission of such affidavits and statements, the order was issued herein. The said affidavits are, in the opinion of the petitioners, false and not the best evidence to submit in support of an application. That the petitioners are entitled to and seek the opportunity of rebutting and proving the falsity of the statements and affidavits submitted.

Wherefore your petitioners respectfully request that the corrected order of June 20th, 1938 be vacated and that the application be denied or that the order be stayed pending the assignment of the application to formal hearing to afford the petitioners an opportunity of submitting evidence in respect to the facts stated herein.

Respectfully submitted, James F. X. O'Brien, Attorney for Protestants, Hudson Transit Lines and Hudson Transit Corporation.

=17 Academy Street, Newark, New Jersey.

June 30, 1938.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing [fol. 161] exceptions upon all parties of record in the above entitled proceeding by mailing a copy thereof to each such party.

James F. X. O'Brien.

Dated, Newark, June 30, 1938.

[fol. 162] September 14, 1938.

Refer to: O-106.
Docket No. MC 78980.
Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman Dba Crescent Cadillac Lines, New York, N. Y.

Mr. Henry P. Goldstein, Attorney for Yelloway Transportation Corp., et al., 1450 Broadway, New York, N. Y.

Dear Sir:

The objections filed by you to the order issued in the above-entitled proceeding have been duly considered, and you are hereby advised that the facts set forth in support of such objections have been deemed sufficient to warrant referring this case back to the field for further investigation.

You will be contacted by our field force as to what further action will be necessary in regard to this matter.

Very truly yours, W. Y. Blanning, Director.

CC: District 2.
cc: Mr. Milton Cotton, 63 Park Row, New York, N. Y.

[fol. 163] September 14, 1938.

Refer to: O-106.
Docket No. MC-78980.
Jacob Vaingrofsky, Herman Trevax, Murray Galley and Morris Glickman Dba Crescent Cadillac Lines, New York, N. Y.

Mr. Leland Taliferro, Attorney for Public Service Interstate Trans. Co., Newark, New Jersey.

Dear Sir:

The objections filed by you to the order issued in the above-entitled proceeding have been duly considered, and you are hereby advised that the facts set forth in support of such objections have been deemed sufficient to warrant referring this case back to the field for further investigation.

You will be contacted by our field force as to what further action will be necessary in regard to this matter.

Very truly yours, W. Y. Blanning, Director.

CC: District 2.
cc: Mr. Milton Cotton, 63 Park Row, New York, N. Y.

[fol. 164] September 14, 1938.

Refer to: O-106.
Docket No. MC 78980.

Herman Trevax, Jacob Vangrofsky, Murray Galley and Morris Glickman Dba Crescent Cadillac Lines.

Mr. James F. X. O'Brien, Attorney for Hudson Transit Lines, et al., 17 Academy Street, Newark, N. J.

DEAR SIR:

The objections filed by you to the order issued in the above-entitled proceeding have been duly considered, and you are hereby advised that the facts set forth in support of such objections have been deemed sufficient to warrant referring this case back to the field for further investigation.

You will be contacted by our field force as to what further action will be necessary in regard to this matter.

Very truly yours, W. Y. Blanning, Director.

CC: District 2.
cc: Mr. Milton Cotton, 63 Park Row, New York, N. Y.

[fol. 165] October 7, 1938.

Refer to: O-106.
In re: MC 78980.
Jacob Vangrofsky, Herman Trevax, Murray Galley & Morris Glickman, d/b/a Crescent Cadillac Lines.

Mr. Leland Taliaferro, Public Service Interstate Transportation Company, Public Service Terminal, Newark, N. J.

DEAR SIR:

This will acknowledge receipt of your letter withdrawing objections to the order issued in the above-entitled case.

Very truly yours, W. Y. Blanning, Director.

District #2.
cc: Crescent Cadillac Lines, 531 E. 169th Street, Bronx, New York.

[fol. 166] C-202 Pass.

Order

Interstate Commerce Commission

No. MC-FC 14106

Application for Substitution: Crescent Express Lines, Inc., Purchaser, New York, New York, and Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a Partnership, Doing Business as Crescent Cadillac Lines, Sellers, New York, New York.

Present: John L. Rogers, Commissioner, Interstate Commerce Commission, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That application in the above entitled matter having been made in accordance with rules and regulations prescribed by the Commission under the Interstate Commerce Act, and that the proposed transaction covered thereby is not subject to the provisions of section 5 of the said act;

It further appearing, That the said Crescent Express Lines, Inc., purchaser, is fit, willing, and able properly to perform the service authorized and to conform to the provisions of the act and the requirements, rules, and regulations thereunder, in accordance with the terms of the Commission's order of June 20, 1938, in MC 78980 issued in the name of Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a partnership, doing business as Crescent Mountain Service, which trade name was subsequently changed by request to Crescent Cadillac Lines; therefore

It is ordered, That the said application be, and it is hereby, granted.

It is further ordered, That upon full compliance, within a period not to exceed thirty days from date of this order, with the requirements of sections 215, 216, and 217 of the said act, and the rules and regulations prescribed by the Commission thereunder covering the filing of common carrier rate publications and the filing and approval of evidence of security for the protection of the public, and upon filing appropriate publications providing for the cancelation of any effective rates or charges applying to trans-

portation service in excess of that herein or otherwise lawfully authorized, it shall be lawful for said purchaser to perform the motor carrier service heretofore authorized under the above-referred-to order of June 20, 1938, pending the issuance of a certificate of public convenience and necessity, unless otherwise ordered.

Dated at Washington, D. C., this 31st day of October, A. D. 1940.

By the Commission, Commissioner Rogers. W. P. Bartel, Secretary. (Seal.)

Note:- Docket No. MC 78980 has been assigned to the purchaser covering the operating rights transferred by this order.

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CONTROL UNIT 12

CHANDLER

ELLENSTEIN & O'BRIEN
COUNSELLORS AT LAW
ACADEMY BUILDING 17 ACADEMY STREET
NEWARK, N.J.
MEYER C ELLENSTEIN
JAMES F. X O'BRIEN — HAROLD J. CAVANAUGH
BENJAMIN C GURNIK
TELEPHONE MITCHELL 2-2200

June 2, 1941.

7

Interstate Commerce Commission,
Bureau of Motor Carriers,
Washington, D. C.

Att. Section of Certificates.

Gentlemen:-

Re: Crescent Express Lines, Inc.
Docket MC 78980.

JUN 3 1941

On June 20, 1938, in Docket MC 78980, a compliance order was issued to Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a partnership doing business as Crescent Mountain Service, to operate between New York City, New York, via New Jersey to Woodburn, New York, and likewise provided for intermediate and off-route points within twenty miles of Woodburn.

On July 1, 1938, on behalf of Hudson Transit Lines, protestant, I sent to the Commission twenty copies of exceptions and petition to stay, which denied that the applicant had served the territory set forth in the order, and that they had not presented proofs to justify such a broad order. Thereafter, to wit, on September 14, 1938 I received a letter from Director Blanning of the Bureau of Motor Carriers, which stated that the objections filed by me had been duly considered, and I was advised that the contents were deemed sufficient to warrant referring the case back to the field for further investigation. Thereafter contact was had with the New York office on the matter, and, as I understand it, the case was marked to be held up until the determination by the Commission in the matter of the application of Irving Nudelman, No. MC 86772. The Crescent case was that of a sedan operator conducting the same type of business set forth in the Nudelman case, and conducting the business only to certain municipalities or townships in the mountain area. The Nudelman case was decided by the Commission by decision dated February 25, 1941, but a petition to the Commission as a whole was filed and the order is therefore not yet effective.

Bureau of Motor Carriers,
Washington, D. C.

Att. Section of Certificates.

Gentlemen:-

Re: Crescent Express Lines, Inc.
Docket MC 78980.

JUN 3 1941

On June 20, 1938, in Docket MC 78980, a compliance order was issued to Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a partnership doing business as Crescent Mountain Service, to operate between New York City, New York, via New Jersey to Woodburn, New York, and likewise provided for intermediate and off-route points within twenty miles of Woodburn.

On July 1, 1938, in behalf of Hudson Transit Lines, protestant, I sent to the Commission twenty copies of exceptions and petition to stay, which denied that the applicant had served the territory set forth in the order, and that they had not presented proofs to justify such a broad order. Thereafter, to wit, on September 14, 1938 I received a letter from Director Blanning of the Bureau of Motor Carriers, which stated that the objections filed by me had been duly considered, and I was advised that the contents were deemed sufficient to warrant referring the case back to the field for further investigation. Thereafter contact was had with the New York office on the matter, and, as I understand it, the case was marked to be held up until the determination by the Commission in the matter of the application of Irving Nudelman, No. MC 86772. The Crescent case was that of a sedan operator conducting the same type of business set forth in the Nudelman case, and conducting the business only to certain municipalities or townships in the mountain area. The Nudelman case was decided by the Commission by decision dated February 25, 1941, but a petition to the Commission as a whole was filed and the order is therefore not yet effective.

It must be noted that the compliance order issued June 1938 contained no adequate and proper description of the type of service operated, and worse than this followed the customary language by specifying a regular route and fixed termini, none of which was justified by the operations in question, and which apparently resulted from the fact that the Commission had not yet handed down either the Sullivan decision or the Nudelman decision above mentioned. Likewise, instead of limiting the operator to the areas previously served by him, it gave the operator a blanket twenty miles for intermediate and off-route points from Woodburn. In both of the respects above mentioned, the order is in direct contradiction of the Commission's decision in the Nudelman case above cited, which both fully described the type of operation and specified the areas to be served. The type of operation in the instant case is and has been no different than the type described in the Nudelman case.

It appears that the above mentioned operation has also been known as Crescent Mountain Lines, and that a short time ago there was a substitution to a corporation called Crescent Express Lines.

The president of Hudson Transit Lines, Mr. D. Clinton Dominick, and the treasurer of another operator in the area, to wit, Mr. Theodore J. Richmond, of Mountain Transit Corp., were informed on Wednesday, May 28th, by Mr. Benjamin Casser, who controls Manhattan Coach Lines, Westwood Transportation Company, and Lincoln Lines, that he now controls Crescent Express Lines, formerly the Crescent Mountain Service. He also called their attention to something not theretofore known by them, to wit, that in April Crescent had filed a new tariff effective June 1st, which cut the rates of the other operators in the area. He then gave them their choice of going through a rate war this summer, or withdrawing protests to the Royal Cadillac Service, which he admitted he has controlled and does control, and also withdrawing protests against the issuance of the certificate to Crescent Express Lines, formerly Crescent Mountain Service. He likewise informed them that he was going to operate buses on regular route, which had never been done by Crescent before, and they have also ascertained that Crescent has made application for the first time to New York City for a regular bus route through the City. This may be confirmed by Lieutenant McGarvey of the New York City Police Department.

Mr. Casser, who controls Manhattan, Westwood and Lincoln Lines, large operators, has competed unlawfully and improperly with the regular route operators by the use of some one of these mountain sedan operations for a number of seasons past, and although he has controlled Royal Cadillac Service and Reliable Cadillac Lines, and now Crescent Express Lines, no applications were ever made for acquisition of such control and management. As a very large operator, whose business on his main operations drops off in the summer, he has been able through these subterfuges to pour a large number of buses in direct competition during the summer months with the regular operators, such as Hudson Transit Lines, who maintain a dependable service throughout the year, and who must look to the summer for revenues to make up losses incurred in winter operation. The regular operators are weary with the losses they have sustained through these improper tactics, and my client is justly incensed at being placed in the position of having this new competition and possible rate war included by reason of his justifiable refusal to be browbeaten into withdrawing protest against this operation not entitled to what Mr. Casser, who now controls it, desires.

Wednesday, May 28th, by Mr. Benjamin Casser, who controls Manhattan Coach Lines, Westwood Transportation Company, and Lincoln Lines, that he now controls Crescent Express Lines, formerly the Crescent Mountain Service. He also called their attention to something not theretofore known by them, to wit, that in April Crescent had filed a new tariff effective June 1st, which cut the rates of the other operators in the area. He then gave them their choice of going through a rate war this summer, or withdrawing protests to the Royal Cadillac Service, which he admitted he has controlled and does control, and also withdrawing protests against the issuance of the certificate to Crescent Express Lines, formerly Crescent Mountain Service. He likewise informed them that he was going to operate buses on regular route, which had never been done by Crescent before, and they have also ascertained that Crescent has made application for the first time to New York City for a regular bus route through the City. This may be confirmed by Lieutenant McGarvey of the New York City Police Department.

Mr. Casser, who controls Manhattan, Westwood and Lincoln Lines, large operators, has competed unlawfully and improperly with the regular route operators by the use of some one of these mountain sedan operations for a number of seasons past, and although he has controlled Royal Cadillac Service and Reliable Cadillac Lines; and now Crescent Express Lines, no applications were ever made for acquisition of such control and management. As a very large operator, whose business on his main operations drops off in the summer, he has been able through these subterfuges to pour a large number of buses in direct competition during the summer months with the regular operators, such as Hudson Transit Lines, who maintain a dependable service throughout the year, and who must look to the summer for revenues to make up losses incurred in winter operation. The regular operators are weary with the losses they have sustained through these improper tactics, and my client is justly incensed at being placed in the position of having this new competition and possible rate war included by reason of his justifiable refusal to be browbeaten into withdrawing protest against this operation not entitled to what Mr. Casser, who now controls it, desires.

This lengthy letter is written in the hope that the Commission may take some immediate action to put an end to the tactics engaged in by Mr. Casser.

The Crescent file is now in Washington with the Section of Certificates.

INTERSTATE COMMERCE COMMISSION
JUN 3 1941
SECTION OF CERTIFICATES

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While the Nudelman decision is not effective, since a petition for reconsideration by the whole Commission has been filed, none the less the Commission, by Division 5, has spoken, and there is no reason why the compliance order heretofore granted should not be immediately set aside, and a new compliance order issued, which will fully describe the service along the lines of the Nudelman decision made by the Commission (Division 5) on February 25, 1941, Docket No. MC 86772, and at the same time in that order describe the areas which may be served by Crescent, in accordance with the proof submitted by them and contained in the docket.

If this can be done immediately, the regular operators will be spared the unfair competition with resultant losses.

I will greatly appreciate as prompt action as you can possibly give to this matter in order to prevent a continuance of the injustice resulting from the tactics used.

Yours very truly,

James F. X. O'Brien

James F. X. O'Brien,
Attorney for Hudson Transit Lines.

OB:HD

[fol. 170] Order C-2

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 2nd day of September, A. D. 1941.

No. MC 78980

Application of Crescent Express Lines, Inc., New York, New York

This proceeding coming on for further consideration:

It appearing, That a previous order having been entered in this proceeding authorizing the issuance of a certificate of public convenience and necessity upon compliance with the terms of the said order; that protests or exceptions to said order having been duly filed; and further consideration having been had;

It further appearing, That applicant or predecessor in interest was, on June 1, 1935, and continuously since has been, in bona fide operation as a common carrier by motor vehicle in interstate or foreign commerce according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order; and the Commission so finding; therefore,

It is ordered, That upon full compliance with the requirements of Sections 215, 216, and 217 of the Interstate Commerce Act, and the rules and regulations prescribed by the Commission thereunder, *governing the filing of common carrier rate publications and filing and approval of evidence of security for the protection of the public*, and upon filing appropriate publications providing for the cancelation of any effective rates or charges applying to transportation service in excess of that herein or otherwise lawfully authorized, a certificate of public convenience and necessity shall be issued, unless otherwise ordered, authorizing said applicant to engage in interstate or foreign commerce, as a common carrier by motor vehicle according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order.

It is further ordered, That in all other respects the said application shall be, and it is hereby, denied, *and that on and after 30 days from date of this order*, unless on the Commission's own motion or for good cause shown it is

otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized.

It is further ordered, That in the event said applicant has not complied with the requirements herein *within 30 days from date of this order*, then said applicant shall show cause, if any there be, *within 60 days from the date of this order*, why said application should not be dismissed, failing in which the said application shall be dismissed without further proceedings.

It is further ordered, That if applicant or any other party in interest desires to protest the issuance of such certificates, such applicant or party in interest shall file with the Commission *within 30 days from the date of this order*, a petition setting forth the grounds relied upon in opposing the granting of such authority and requesting that the issuance of the said certificate be withheld pending further investigation and order by the Commission.

And it is further ordered, That the previous order issued in this proceeding, describing the authority to which applicant has been found to be entitled, upon compliance with the requirements therein specified, be, and it is hereby, vacated and set aside.

By the Commission, division 5.

(Seal.) W. P. Bartel, Secretary.

[fols. 171-172] C-2

Appendix to the order of the Interstate Commerce Commission, Division 5, dated the 2nd day of September, A. D. 1941.

No. MC 78980

Application of Crescent Express Lines, Inc., New York, New York

The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than six passengers in any one vehicle, but not

including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during the season extending from June 1 to October 1, inclusive, over irregular routes, is as specified below:

Between New York, N. Y., on the one hand, and, on the other, points and places in Sullivan County, N. Y., and the Townships of Hardenbergh, Denning, Rochester, Warwarsing, Gardiner, and Shawangunk, Ulster County, N. Y., traversing New Jersey for operating convenience only.

[fol. 173] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC-78980

In the Matter of CRESCENT EXPRESS LINES, INC.

PROTEST OF CRESCENT EXPRESS LINES, INC., AND PETITION TO STAY ISSUANCE OF CERTIFICATE IN THE WITHIN MATTER—Filed October 10, 1941.

Comes now Crescent Express Lines, Inc., the applicant in the above entitled proceeding, by George H. Rosen, its attorney, and respectfully protests to the issuance of a certificate in the within matter and for a stay of the issuance thereof upon the grounds more particularly set forth as follows:

1. This protest is filed in opposition to the compliance order dated September 2, 1941.

2. The record herein warranted the compliance order of June 20, 1938, issued to the applicant in the above matter and which provided as follows:

Appendix to the order of the
Interstate Commerce Commission Div. 5
Dated the 20th day of June 1938
No. MC 78980

The service to be rendered by applicant as authorized by the order of which this is a part, in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, over the regu-

lar route, between fixed termini, and to and from [fol. 174] intermediate and off-route points, during the season extending from the 1st of June to the 1st of Oct. inclusive, is as specified below.

Between New York and Woodbourne, N. Y.

From N. Y. over G. W. bridge to Fort Lee, N. J. thence over N. J. Highway 4 to Bergenfield, N. J. thence over N. J. Highway 2 to the N. J. N. Y. State line; thence over N. Y. Highway 17 to Monticello N. Y. and thence over N. Y. Highway 42 to Woodbourne and return over the same route.

Intermediate and off route points within 20 miles of Woodbourne.

3. The vacating and setting aside of the said order by the new compliance order of September 2, 1941, was without any evidence or procedure to sustain such action.

4. The issuance of said compliance order dated September 2, 1941, is without any evidence to sustain it, and no proof of any kind exists to justify the restrictions contained therein to direct non-scheduled, door-to-door operations over irregular routes with vehicles having only six (6) passengers besides the driver.

5. The Interstate Commerce Commission is without authority of law to restrict the right of any carrier to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate as the development of the business and the demands of the public shall require; and the issuance of the said order dated September 2, 1941, restricting the carrier herein to vehicles having a seating capacity of only six passengers besides the driver and children under ten years of age is [fol. 175] contrary to the provisions of the Motor Carrier Act of 1935, the Transportation Act of 1940, and the amendments thereof.

6. There are no findings of fact or conclusions of law pursuant to the statute and rules in such case made and provided to justify or sustain the said compliance order dated September 2, 1941.

7. The said compliance order dated September 2, 1941 should be vacated and set aside, and the compliance order of June 20, 1938 reinstated.

Wherefore, protestant Crescent Express Lines, Inc., respectfully prays that the compliance order dated September 2, 1941, be vacated and set aside and that the issuance of a certificate herein be stayed pending further investigation and order of the Commission.

Dated: New York, N. Y., October 7, 1941.

Respectfully submitted, George H. Rosen, Attorney for Crescent Express Lines, Inc., Office and P. O. Address, 302 Broadway, Borough of Manhattan, City of New York.

[fol. 176] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC-78980

In the Matter of CRESCENT EXPRESS LINES, INC.

BRIEF IN SUPPORT OF PROTEST OF CRESCENT EXPRESS LINES, INC., TO ISSUANCE OF CERTIFICATE PURSUANT TO COMPLIANCE ORDER DATED SEPTEMBER 2, 1941

The compliance order of September 2, 1941 was issued without notice despite the existence of a previous compliance order dated June 20, 1938. The applicant, Crescent Express Lines, Inc., respectfully objects to the new compliance order by reason of the fact that it changes the content of the previous compliance order so as to direct a non-scheduled, door-to-door service over irregular routes with vehicles having six passengers besides the driver.

The Real Issue Is Whether the Commission Has the Right to Restrict a Carrier to Vehicles of the Sedan Type

In the Nudelman case, MC-86772, decided February 25, 1941, the Commission set forth the principle that a carrier could be restricted to a vehicle of the sedan type having a seating capacity of not more than six passengers besides [fol. 177] the driver. Commissioner Lee dissented. This ruling and dissent were followed in subsequent cases.

Section 203, Subdivision 13, defines a motor vehicle as follows:

"(13) The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semi-trailer propelled or

drawn by mechanical power and used upon the highways in the transportation of passengers or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails."

Section 208 (a) provides as follows:

"Any certificate issued under section 206 or 207 shall specify * * *: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require."

In view of the decision in the Nudelman case there is no need to set forth the matter any further except to protect applicant's position in this matter.

It is also respectfully submitted that the change in the form of the order from that contained in the order of June 20, 1938 is not supported by any evidence or procedure whatsoever.

[fols. 178-179] CONCLUSION

The order of September 2, 1941 should be vacated and set aside and the order of June 20, 1938 should be reinstated, and that all proceedings for the issuance of a certificate pursuant to the said order of September 2, 1941, should be withheld.

Dated: New York, N. Y., October 7, 1941.

Respectfully submitted, George H. Rosen, Attorney for Crescent Express Lines, Inc., Office and P. O. Address, 302 Broadway, Borough of Manhattan, City of New York.

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of October, 1941, served a copy of the foregoing protest and brief on all parties of record by mailing a copy thereof postage prepaid.

George H. Rosen.

[fol. 180] BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of The Application of CRESCENT EXPRESS LINES, INC.

Docket No. MC-78980

REPLY TO "PROTEST OF CRESCENT EXPRESS LINES INC. AND PETITION TO STAY ISSUANCE OF CERTIFICATE"—Filed Oct. 17, 1941

Comes now Mountain Transit Corporation, protestant in the above proceedings, by its attorney and respectfully replies to the protest and petition herein and prays that the same be denied and in support thereof states as follows:

Applicant's predecessors filed a Grandfather application which was referred to a District Supervisor in New York City for informal conference sometime prior to May 1st, 1938. None of the bus operators in the territory were advised of this conference and this Commission, in accordance with documentary evidence and proof submitted by the said applicant's predecessors and upon statements in a questionnaire, issued a compliance order dated May 7th, 1938, which was subsequently succeeded by a compliance order [fol. 181] dated June 20th, 1938. This compliance order has been set out in the protest herein, paragraph "2".

Protestants, who were predecessors to Mountain Transit Corporation, and Inter-City Transportation Co. Inc., filed Exceptions to the order of June 20th, 1938. The applicant's predecessors did not file any Exceptions thereto, obviously being satisfied with whatever legal determination the Commission would make upon the facts and evidence submitted. After the filing of Exceptions on or about June 6th, 1938, D. V. Grant, District Supervisor, addressed a letter on October 31st, 1938, to the applicant's predecessors advising them:

> "Upon specific complaint, the finding made by this Commission in the matter of your 'grandfather' rights has been stayed and the application returned to me for further informal investigation and report."

They were requested to be present on December 1st, 1938, at which time protestants were also present.

At the informal conference on December 1st, 1938, no additional data was submitted over and above that originally given to the Examiner and that data consisted of evidence of sedan movements over irregular routes in a door-to-door service, between points in New York City, on the one hand, and specific points in Sullivan and Ulster Counties, on the other. The data and proof submitted to the Commission at the informal conferences indicated that applicant's predecessors operated sedans in an irregular, seasonal, non-scheduled, door-to-door service.

In a series of cases involving similar facts, entitled *Irving Nudelman, Common Carrier, MC-86772 et als.*, this Commission had pending the question as to whether the applicants [fol. 182] in their type of service were engaged in special operations or in a regular route common carrier service. Final determination has been made in *22 M. C. C. 275* and upon report of the Commission on reconsideration decided February 25th, 1941, they find that applicants therein, engaged in the type of service as described, were entitled to certificates of convenience and necessity to engage in special seasonal operations as common carriers by motor vehicles of passengers and their baggage, between May 15 and September 30th, both inclusive, between points in New York, N. Y. and certain specific points in Sullivan and Ulster Counties, N. Y., over irregular routes through New Jersey in a non-scheduled, door-to-door service, limited to the transportation of not more than six passengers in any one vehicle but not including the driver thereof and not including children under ten years of age who did not occupy a seat or seats.

Accordingly, this Commission on September 2nd, 1941, ordered that the order of June 20th, 1938 herein, be set aside and that a certificate be issued for service to be rendered as a common carrier by motor vehicle of passengers and their baggage in special operations as described in the *Nudelman* case between New York, N. Y., on the one hand, and, on the other, points and places in Sullivan County, N. Y., and the townships of Hardenbergh, Denning, Rochester, Warwarsing, Gardiner and Shawangunk, Ulster County, N. Y., traversing New Jersey for operating convenience only.

The petitioner's brief states:

"The Real Issue Is Whether The Commission Has The Right To Restrict A Carrier To Vehicles Of The Sedan Type."

[fol. 183] If that is the only issue, the same has already been determined in the *Nudelman* case* and accordingly the petition should be denied and the order of September 2nd, 1941, should be continued in force and effect as properly describing the legal authority to which the applicant is entitled upon the facts of operation submitted by them to this Commission.

In addition to the aforementioned, it is pointed out that the applicant does not make claim that there is any additional evidence or facts to be submitted but that the same already are in possession of the Commission and that in its opinion those facts would entitle the applicant to the form of authority as described originally in the order of June 20th, 1938. In other words, applicant merely differs as a matter of law upon the admitted facts of operation and it is therefore respectfully reiterated and urged that the determination made herein is proper and that the petition should be denied.

Dated, New York, N. Y., October 16th, 1941.

Respectfully submitted, Henry P. Goldstein, Practitioner and Attorney.

[fols. 184-185] CERTIFICATE OF SERVICE

I do hereby certify that there has, on this 16th day of October, 1941, been served a copy of the foregoing Reply upon all parties of record to this proceeding.

(S) Henry P. Goldstein.

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* The Nudelman determination has since been followed in other types of motor bus cases. See Harry Benson 29 M. C. C. 603.

[fol. 186] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 78980

In the Matter
of
The Application of Crescent Express Lines, Inc.,
New York, New York

REPLY OF PROTESTANT, HUDSON TRANSIT LINES, INC. TO PROTEST OF CRESCENT EXPRESS LINES, AND ITS PETITION TO STAY ISSUANCE OF CERTIFICATE—Filed Oct. 18, 1941.

Statement of Facts and Argument

On September 2, 1941, a compliance order was entered by the Commission giving to Crescent Express Lines the right to carry passengers in interstate commerce in special, non-scheduled, door to door service, limiting the transportation to not more than six passengers in any one vehicle, excluding the driver and small children, and covering the season, June 1st to October 1st, and over irregular routes, covering the territory of New York, New York, on the one hand, and points and places in all of Sullivan County, and in specified townships of Ulster County, New York, on the other hand.

This order is protested by the applicant, which asks that it be set aside, that the compliance order of June 20, 1938 be reinstated, and that the Commission withhold ac-
[fol. 187] tion in issuing certificate on the compliance order of September 2, 1941.

The reasons for the protest, while listed as seven in number, actually consist of two points or claims.

One claim, covered by protests 1, 2, 3, 4, 6 and 7 is that there was no evidence before the Commission to warrant the issuance of the Septembr 2, 1941 compliance order in lieu of the June 20, 1938 compliance order.

The other claim set forth in protest No. 5 is that the Commission has not the power to define the special service permitted, as it did in the September 2, 1941 compliance order.

If the Commission will but review the docket in the instant case, it will find that an application under Form BMC A was filed by Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a partnership, d/b/a Crescent Mountain Service, Bronx, New York.

The June 20, 1938 compliance order was issued to that partnership. Later, there was a substitution of Crescent Express Lines, Inc. as applicant, in lieu of the partnership. Still later, and in July of this year, an application was filed under Form BMC 45 by Mohawk Lines, Inc. MC-F-1607 seeking to acquire control by purchase of Crescent Express Lines, Inc.

Mohawk Coach Lines is a company controlled by Benjamin Casser, who is also the president, director and stockholder of Manhattan Transit Company, Manhattan Coach Lines, Inc., Westwood Transportation Company, Westwood Transportation Lines, Inc. Lincoln Transit Co. Inc., Atlantic Coach Lines, Inc., and Consolidated Bus Terminal, Inc.

George H. Rosen, the attorney for Mr. Casser's Mohawk Lines, Inc. is also the attorney protesting against the compliance order issued September 2, 1941.

[fol. 188] The acquisition case was set for hearing September 4, 1941, before Examiner Higgins, but upon the applicant being informed of the compliance order handed down September 2, 1941, an insistent request was made for adjournment and the matter was put off without date.

It appears that this large bus operator, using Mohawk Lines, Inc., and being represented by Mr. Rosen, is seeking to in some way or other get a regular route operation between fixed termini to compete with existing facilities, and has attempted to effect that purpose through the acquisition of this special operator.

The actual protest and petition in the name of the applicant, Crescent, would appear to be that of Mr. Casser's Mohawk Lines, which thought that in acquiring Crescent it could effect its purpose of improperly competing with bona fide existing regular route operators.

The contention of Crescent that the evidence warrants the compliance order of June 20, 1938, and does not warrant the corrected compliance order of September 2, 1941 is wholly without basis.

The records in the official docket disclose that on February 12, 1936, the partnership, Crescent, filed an application under form BMC A, and on March 26, 1937, it filed a BMC A-2 application, in which it set forth the type of operation conducted by it, and even did more than this, to wit, it indicated that because of this type of operation it believed it was exempt from the provisions of the Motor Carrier

Act, 1935. Reference to the application BMC A-2, filed as above mentioned, indicates this statement by the applicant:

> "And applicant further reserves the right to claim exemption from any and all provisions of the Motor [fol. 189] Carrier Act, 1935, and the filing of this application shall not be deemed a waiver of applicant's rights."

In the supplemental Exhibit A, applicant alleged that it went from New York City by way of the George Washington Bridge to Suffern and to Wurtsboro—

> "where traffic is distributed to the summer resorts within a radius of twenty miles from Woodbourne, New York."

Annexed to the application was a map showing the New York area and the way that applicant travelled to the mountain resort area, and indicated on that map a large irregular circle as the area served by it, which was an area having an approximate twenty mile radius from Woodbourne, New York. This map, which was part of the application, indicated a *territory served*, and did not indicate a route or routes between fixed termini in that area.

Attached to exhibits in the docket was a card submitted by the applicant which reads as follows:

"7 Passenger Cars
Leaving Daily to All Parts of the Mountains
At Lowest Rates
(a number of places were listed)
From Your Home to Your Hotel
Boarding and Rooming Accommodations if desired.
Please Call to See Us At Our Residence
About Reservations
Crescent Mountain Service
531 East 169th Street."

The docket also disclosed protests to the application by a number of protestants, including Hudson Transit Lines, [fol. 190] and disclosed that in the beginning of 1938, the Commission questioned the applicant's right to operate by show cause orders, and that the applicant submitted a number of affidavits describing his operations, their type, necessity, etc. Excerpts from some of these affidavits will

be here set forth, indicating the type of operation conducted by applicant, Crescent Mountain Service.

Affidavit of Rubin Fried, subscribed and sworn January 10, 1938, among other things said:

> "The reason for their service is that they transport people to hotels located in all roads and by-roads, obviating the necessity of their passengers having to use foot or other extraordinary means to get to their actual destination."

In the affidavit of Harry K. Cohen, who had a hotel at Woodbourne, subscribed and sworn, January 10, 1938, it was stated among other things:

> "I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service, since May, 1932. Their business has been the transportation of guests of mine from New York City to my hotel, and from my hotel to New York City."

The affidavit of Moe Bail, subscribed and sworn January 10, 1938, and residing at Woodborne, New York, in referring to the applicants, stated:

> "We have engaged their cars on numerous occasions for the transportation of guests in our hotel to New York City. * * * I have also been transported by them from my hotel to New York City. During my [fol. 191] passage, I noticed that they picked up passengers from various other summer resorts located throughout Sullivan County and transported them to New York City."

The affidavit of Izzy F. Feldman, a hotel owner of Woodridge, New York, sworn and subscribed January 10, 1938, stated among other things, in referring to the applicants:

> "They operate seven passenger sedans and carry passengers to and from summer hotels located in Sullivan and Ulster Counties. * * * The aforesaid Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman have been engaged in this type of transportation to and from my hotel since 1932. * * * I sincerely believe that their mode of transportation is extremely necessary and convenient for my own and my guests' needs."

The affidavit of Israel Levine, whose store the applicants used at 531 East 169th Street, New York City, subscribed and sworn January 14, 1938, among other things, in referring to the applicants, stated:

> "I have personally seen them aranging for said trips with passengers."

The affidavit of Adela Dingenthal of the Bronx, subscribed and sworn January 14, 1938, among other things, said:

> "In the summer of 1933 and 1934, I hired the aforesaid persons (referring to the applicants) to transport me and my family from their office to Accord in the County of Ulster. * * * My family and I have personally found that this method of transportation is [fol. 192] most convenient, and the most economical for our purpose."

The affidavit of Edna Livingston of the Bronx, subscribed and sworn January 14, 1938, stated that she had hired the car of applicants to take herself and her family from applicant's office in New York City to North Branch in Sullivan County, and said:

> "Riding with us at the times that we were transported to North Branch, New York, by the aforementioned Crescent Mountain Service, were other passengers who were transported to other points in Sullivan and Ulster Counties. I specifically remember other pasengers being taken to Kenoza Lake, Jeffersonville, White Lake, Mongaup Valley and Swan Lake."
>
> (Note: A reference to the map will disclose that the operator serving all of these points in the one car was obviously operating over irregular routes and not between fixed termini.)

In the affidavit of Harry Trevax, the father of the applicant, Herman Trevax, sworn and subscribed January 14, 1938, he told how his son had started the business with the other applicants joining in with him, and how he had helped his son, and showed the type of business they carried on when he stated:

> "My wife and I helped him out by answering phone calls and booking work."

It is most important to note that when the Crescent's right to operate was questioned in the beginning of 1938, the applicant brought everything it could, such as diaries showing the reservations for passengers, and all of the [fol. 193] aforesaid affidavits to prove its right to operate, by showing that it had been in operation. It made no claim at that time to any regular route, but merely sought to carry on the business it always had done. Even though it brought everything it could, no attempt was made to produce, and the record shows there was not produced any schedules of operation, such as a regular route operator would have had, and no tickets or ticket sale books, and no advertisements other than the throw-aways indicating the special door to door service, which advertised that it would take people from their home to their hotel. *These proofs clearly disclose that the applicant was not a scheduled operator on regular route between fixed termini, but was a special operator engaged in special operations, territorial in scope, and over irregular routes in unscheduled service, operated with seven passenger sedans.*

After this proof was submitted in the beginning of 1938, the Commission issued a compliance order, dated June 20, 1938, which purported to give to applicant the right to continue the business which he had done, but which erroneously gave him a regular route operation. This was because the Commission had not yet passed upon the many cases involving this question, and the *Nudelman* decision, MC 86772, 22 M. C. C. 275, had not of course been handed down.

Immediately after the issuance of this compliance order, protestants, including Hudson Transit, objected and filed protest, claiming that no regular route operation had ever been run by Crescent. The result of this protest was a letter, as shown by the docket, dated September 14, 1938, addressed to James F. X. O'Brien, Attorney for Hudson Transit Lines, referring to O-106, Docket MC 78980, Her- [fol. 194] man Trevax, etc. d/b/a Crescent, in which Director Blanning stated as follows:

> "The objections filed by you to the order issued in the above entitled proceeding have been duly considered, and you are hereby advised that the facts set forth in support of such objections have been deemed sufficient to warrant referring this case back to the field for further investigation."

The matter was then held up until the questions of law were settled by the Commission as a whole in the *Nudelman* case. These were finally settled when the Commission as a whole, on petition for reconsideration to it, rejected the petition and affirmed the action of the Commission by Division 5 in its determination and decision of the *Nudelman* case, 22 M. C. C. 275. Then the Commission merely proceeded to apply to the facts already in its possession, some of which have been set forth in this brief, the law determined in the *Nudelman* case, with the result that it handed down the compliance order of September 2, 1941, definitely and properly defining the special type of service which Crescent had done, and which it was entitled to continue to do. The Commission further carried out its duty by specifying the territory at each end which could be served by this special operation, and instead of leaving a vague twenty mile radius from Woodbourne, specified the places served by the applicant, which, incidentally, upon examination cover practically all of the townships within a radius of twenty miles from Woodbourne.

If Crescent had not sold its operations to the large operator above mentioned, it would undoubtedly have been content to continue with the type of operation always theretofore conducted by it. This large operator, however, is looking not for a special type operation but for a regular route [fol. 195] operation between fixed termini, which he can use to compete with present bona fide existing facilities and take away from them a large part of their revenues during the summer time, when that large operator has a great many buses at his disposal due to a seasonal slack in his main operating lines.

The contention that there was no basis for the 1941 compliance order and that there was for the 1938 compliance order is clearly shown to be erroneous by reference to the facts above mentioned, contained in the official docket. The applicant's own statements clearly show that the only proper compliance order which could be issued is the order which was issued on September 2, 1941.

Hudson Transit Lines will not here argue the right of the Commission to properly define the special type of service rendered.

The contentions in the Crescent's protest and petition for stay are merely a part of the many questions which were raised and passed upon by the Commission in the

Nudelman case. That case has been heard and passed upon by the Commission as a whole. It is the law which must be applied to the undisputed facts disclosed by examination of the docket herein.

Hudson Transit Lines respectfully alleges that the petition to stay the issuance of a certificate under the compliance order of September 2, 1941, is merely an attempt on the part of Crescent and Mohawk Lines to continue an illegal attempt to compete with and take away the business of Hudson Transit Lines and the other bona fide operators serving the territory on regular route between fixed termini.

We respectfully request the Commission to immediately reject the protest and petition of Crescent, and to end this litigation by the issuance of a certificate defining the rights of Crescent in the manner set forth in the September 2, [fol. 196] 1941 compliance order to the end that it may be prevented from unlawfully invading our field of operation to the detriment and loss of Hudson Transit Lines.

Respectfully submitted, (S.) James F. X. O'Brien,
Attorney for Protestant, Hudson Transit Lines.

CERTIFICATE OF SERVICE

I do certify that on October 18, 1941, a copy of the foregoing Reply was served upon the attorneys for all parties of record in the within matter.

James F. X. O'Brien.

[fols. 197-198] ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 17th day of March, A. D. 1942.

No. MC 78980

Application of Crescent Express Lines, Inc., New York, New York

This proceeding coming on for further consideration:

It appearing, That a petition has been filed by applicant objecting to the order of September 2, 1941, issued herein; and further consideration having been had, and good cause appearing therefor;

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 199] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC-78980

In the Matter of CRESCENT EXPRESS LINES, INC.

PETITION ON BEHALF OF APPLICANT, CRESCENT EXPRESS LINES, INC., FOR RECONSIDERATION BY THE ENTIRE COMMISSION AND/OR TO REOPEN AND GRANT A HEARING IN THE WITHIN MATTER—Filed April 6, 1942

Comes now Crescent Express Lines, Inc., the applicant in the above entitled proceeding and files this, its petition for reconsideration by the entire Commission of the decision of Division 5, under date of March 17, 1942 and prays that a hearing be directed herein; and in support of the said petition respectfully shows:

1. That heretofore this Commission issued its compliance order dated June 20, 1938, to the applicant in the above matter which provided as follows:

Appendix to the order of the Interstate Commerce Commission Div. 5 Dated the 20th day of June 1938

No. MC 78980

The service to be rendered by applicant as authorized by the order of which this is a part, in interstate or [fol. 200] foreign commerce as a common carrier by motor vehicle of passengers and their baggage, over the regular route, between fixed termini, and to and from intermediate and off-route points, during the season extending from the 1st of June to the 1st of Oct. inclusive, is as specified below.

Between New York and Woodbourne, N. Y.

From N. Y. over G. W. bridge to Fort Lee, N. J. thence over N. J. Highway 4 to Bergenfield, N. J. thence over N. J. Highway 2 to the N. J. N. Y. State line; thence over N. Y. Highway 17 to Monticello, N. Y. and thence over N. Y. Highway 42 to Woodbourne and return over the same route.

Intermediate and off route points within 20 miles of Woodbourne.

2. That the said compliance order was vacated and set aside by this Commission and a new compliance order dated September 2, 1941, was issued without any other or additional evidence or procedure to support or sustain said action. That no hearings to support the new compliance order were had, and there was no evidence taken to support the change in the compliance order previously issued on June 20, 1938. The only evidence in the record is that taken at the *ex parte* hearing which was sufficient to support the compliance order of June 20, 1938 or the same would not have been made.

3. The issuance of the said compliance order dated September 2, 1941 is not sustained by any evidence, and the [fol. 201] restrictions therein contained restricting the applicant to non-scheduled, door-to-door operations over irregular routes with vehicles having only six (6) passengers besides the driver is contrary to the statute in such case made and provided. No provision in the new compliance order is made for passengers who wish to take vehicles of the applicant at terminals and who do not care to go beyond applicant's terminals at the other end of the line. There is nothing to support the restriction to door-to-door operations in the record because there were no public hearings in this matter.

The Commission has no authority to restrict a carrier to scheduled or non-scheduled operations. There is no provision in the statute itself that justifies the Commission to insert a restriction as to schedules. The only time the question of schedules might be restricted is in the case of a charter operation where the entire vehicle is chartered for a particular trip, but where as here the carrier is classified as a common carrier transporting individual passengers in a vehicle, not wholly chartered by such passengers, such a restriction as to schedules is outside the provisions of the statute itself. Applicant wishes to call the Commission's attention to the said "non-scheduled" restriction contained in the order. This is not a description of what applicant is authorized to do but is a negative description of what the order directs should not be done. Negative provisions are not in accordance with the statute, and therefore, the said provision should be eliminated.

The inclusion of the restriction "door-to-door" as stated above is not supported by any evidence, but even if it were, [fol. 202] the said order is not broad enough in that no provision is contained therein for passengers who wish to board applicant's vehicles at terminals and who wish to be transported to terminals. This carriage is less than so-called door-to-door operations and provision should be made therefor. This service was covered by the compliance order of June 20, 1938 and is supported by the evidence on which it was based. Applicant is entitled to its rights as set forth in said order of June 20, 1938 and is entitled to reinstatement of the said order.

The restriction as to sedans is the real subject of the order and should be eliminated for the reasons hereinafter set forth.

4. The Interstate Commerce Commission is without authority of law to restrict the right of any carrier to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate as the development of the business and the demands of the public shall require; and the issuance of the said order dated September 2, 1941, restricting the carrier herein to vehicles having a seating capacity of only six passengers besides the driver and children under ten years of age is contrary to the provisions of the Motor Carrier Act of 1935, the Transportation Act of 1940, and the amendments thereof.

The Real Issue Is Whether the Commission Has the Right to Restrict a Carrier to Vehicles of the Sedan Type

In the *Nudelman* case, MC-86772, decided February 25, 1941, the Commission set forth the principle that a carrier [fol. 203] could be restricted to a vehicle of the sedan type having a seating capacity of not more than six passengers besides the driver. Commissioner Lee dissented. This ruling and dissent were followed in subsequent cases.

Section 203, Subdivision 13, defines a motor vehicle as follows:

> "(13) The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property,

but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails."

Section 208 (a) provides as follows:

"Any certificate issued under sections 206 or 207 shall specify * * *: *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require."

In view of the decision in the *Nudelman* case there is no need to set forth the matter any further except to protect applicant's position in this matter.

[fol. 204] It is also respectfully submitted that the change in the form of the order from that contained in the order of June 20, 1938 is not supported by any evidence or procedure whatsoever.

The Commission has no authority to freeze a carrier to its status as of June 1, 1935. See *United States of America and Interstate Commerce Commission* v. *Carolina Freight Carrier's Corp.*, 86 L. Ed. 627; *Howard Hall, Inc.* v. *United States of America*, 86 L. Ed. 639. This is particularly true of freezing a carrier to the type of vehicles it used on June 1, 1935. See *Section 208 (a) supra.*

5. There are no findings of fact or conclusions of law pursuant to the statute and rules in such case made and provided to justify or sustain the said compliance order dated September 2, 1941, and could not make such findings because there was no new evidence taken.

6. The said compliance order dated September 2, 1941 should be vacated and set aside, and the compliance order of June 20, 1938 reinstated.

[fols. 205-207] CONCLUSION

The order of September 2, 1941 should be vacated and set aside and the order of June 20, 1938 should be reinstated, and that all proceedings for the issuance of a certificate pursuant to the said order of September 2, 1941, should be

withheld; or in the alternative that a public hearing be ordered herein.

Dated: New York, N. Y., April 3, 1942.

Respectfully submitted, (S.) George Rosen, Attorney for Crescent Express Lines, Inc., Office & P. O. Address, 302 Broadway, Borough of Manhattan, City of New York.

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of April, 1942, served a copy of the foregoing petition on all parties of record by mailing a copy thereof postage prepaid.

George H. Rosen.

[fol. 208] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 78980

In the Matter of The Application of CRESCENT EXPRESS LINES, INC., New York, New York

REPLY OF PROTESTANT, HUDSON TRANSIT LINES, INC. TO PETITION OF CRESCENT EXPRESS LINES, INC. FOR RECONSIDERATION BY THE ENTIRE COMMISSION—Filed April 13, 1942

Statement

The petitioner, Crescent Express Lines, Inc. by petition dated April 3, 1942 appealed to the Commission as a whole seeking reconsideration of a previous petition addressed to Division 5, wherein it sought to set aside a compliance order issued September 2, 1941 to applicant, and reinstate a previous compliance order of June 20, 1938 issued to applicant, or, in the alternative, grant a hearing thereon.

The application actually is an attempt on the part of the applicant, who, by its compliance order, is limited to an irregular route, nonscheduled, door to door service, limited to the transportation of not more than six passengers in any one vehicle, to find some excuse to operate in a manner different from that authorized, and different from that operated on the Grandfather date.

[fol. 209] It is an attempt to obtain the setting aside of the September 2, 1941 compliance order in order to then il-

legally operate over regular route and between fixed termini, in competition with lawful regular route operators despite the fact that applicant on the Grandfather date and thereafter was an irregular route, door to door sedan livery operator.

The petition alleges that as a matter of fact there is nothing before the Commission to support the definition of its Grandfather operations as contained in the September 2, 1941 compliance order, and secondly that aside from the facts, as a matter of law, the Commission had no right to so define its Grandfather operations, and thus limit its right to operate to operations similar to those conducted on the Grandfather date. Both of these contentions are without merit.

In addition to the facts contained in the record under Docket MC 78980, it is interesting to note that in July, 1941, an application was filed under Form BMC 45 by Mohawk Lines, Inc. seeking to acquire control by purchase of Crescent Express Lines, Inc. under Docket No. MC-F 1607.

Mohawk Lines is a company controlled by Benjamin Casser, who is also the president, director and stockholder of Manhattan Transit Co., Manhattan Coach Lines, Inc., Westwood Transportation Co., Westwood Transportation Lines, Inc., Lincoln Transit Co. Inc., Atlantic Coach Lines, Inc., and Consolidated Bus Terminal, Inc.

George H. Rosen, the attorney for Mr. Casser's Mohawk Lines, Inc., is the attorney who protested against the compliance order issued September 2, 1941 in the previous protest to Division 5, and is the attorney of record for the appellant, Crescent, in this instant petition.

[fol. 210] This is particularly worthy of note in that on December 9, 1941, in Docket MC-F 1607, the Commission, by Division 5, dismissed the application of Mr. Casser's Mohawk Lines to acquire control of Crescent Express Lines, Inc. This dismissal resulted from a petition to withdraw the application despite the fact that it had been set for hearing, and actually proceeded to hearing on September 4, 1941 before Examiner Higgins. The applicant refused to go on with the hearing stating that it had just been informed of the compliance order of September 2, 1941, defining the operation as an irregular route operator, whereas Mr. Casser's Mohawk Lines had a provision in the contract

that if there was not a regular route certificate the contract could be cancelled.

Through devious other companies, this same operator has been seeking to get a regular route operation in competition with the lawful regular route operators through the use of irregular route, door to door sedan operations which had pending Grandfather applications. The true nature of these other operations would then be discarded and they would be operated as competitive regular route bus operations.

The whole intent and purpose of the present petition is to find some way to operate the Crescent as a regular route bus operation despite the applicant's (Crescent's) own proof that it was an irregular route, door to door, unscheduled sedan operator, and despite the fact that the application of Mr. Casser's Mohawk Lines to acquire control of Crescent was dismissed by the Commission on December 9, 1941.

Under Point I, we shall set forth the facts contained in the Commission's docket, amply supporting the determination that applicant, Crescent, on the Grandfather date, and thereafter, was an irregular route, door to door, non-scheduled sedan operator.

Under Point II, we shall reply to applicant's contentions [fol. 211] that the Commission was without legal right to fully define the Grandfather applications of applicant, Crescent.

Point I

An examination of the docket in the instant case will reveal that an application under Form BMC A was filed by Herman Trevax, Jacob Vangrofsky, Murray Galley, and Morris Glickman, a partnership doing business as Crescent Mountain Service, Bronx, New York. On June 20, 1938, a compliance order was issued to that partnership. This compliance order was protested on the ground that it constituted an order for a regular route operation, whereas the operations were in fact irregular route operations, and the Commission immediately recognized this to be the case and indicated that the file would be referred back to the field office for check and report. Thereafter, and after certain legal questions had been decided by the Commission as a whole in the *Nudelman* case, 22 M. C. C. 275, a new compliance order was handed down setting aside the previous one; and in the new compliance order the Commission performed

its duty of fully describing the type of service rendered by applicant, Crescent, on the Grandfather date, and therefore the type of service to which it would be entitled.

The records in the official docket disclose that on February 12, 1936, the partnership, Crescent, filed an application under form BMC A, and on March 26, 1937, it filed a BMC A-2 application, in which it set forth the type of operation conducted by it, and even did more than this, to wit, it indicated that because of its type of operation it believed it was exempt from the provisions of the Motor Carrier Act, [fol. 212] 1935. Reference to the application BMC A-2, filed as above mentioned, indicates this statement by the applicant:

> "And applicant further reserves the right to claim exemption from any and all provisions of the Motor Carrier Act, 1935, and the filing of this application shall not be deemed a waiver of applicant's rights."

In the supplemental Exhibit A, applicant alleged that it went from New York City by way of the George Washington Bridge to Suffern and to Wurtsboro—

> "where traffic is distributed to the summer resorts within a radius of twenty miles from Woodbourne, New York."

Annexed to the application was a map showing the New York area and the way that applicant travelled to the mountain resort area, and indicated on that map a large irregular circle as the area served by it, which was an area having an approximate twenty-mile radius from Woodbourne, New York. This map, which was part of the application, indicated a *territory served*, and did not indicate a route or routes between fixed termini in that area.

Attached to exhibits in the docket was a card submitted by the applicant which reads as follows:

"7 Passenger Cars
Leaving Daily to All Parts of the Mountains
At Lowest Rates
(a number of places were listed)
From Your Home to Your Hotel
Boarding and Rooming Accommodations if desired
Please Call to See Us At Our Residence
About Reservations

CRESCENT MOUNTAIN SERVICE
531 East 169th Street"

[fol. 213] The docket also disclosed protests to the application by a number of protestants, including Hudson Transit Lines, and disclosed that in the beginning of 1938, the Commission questioned the applicant's right to operate by show cause orders, and that the applicant submitted a number of affidavits describing his operations, their type, necessity, etc. Excerpts from some of these affidavits will be here set forth, indicating the type of operation conducted by applicant, Crescent Mountain Service.

Affidavit of Rubin Fried, subscribed and sworn January 10, 1938, among other things, said:

> "The reason for their service is that they transport people to hotels located in all roads and by-roads, obviating the necessity of their passengers having to use foot or other extraordinary means to get to their actual destination.

In the affidavit of Harry K. Cohen, who had a hotel at Woodbourne, subscribed and sworn, January 10, 1938, it was stated among other things:

> "I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service, since May, 1932. Their business had been the transportation of guests of mine from New York City to my hotel, and from my hotel to New York City."

The affidavit of Moe Bail, subscribed and sworn January 10, 1938, and residing at Woodbourne, New York, in referring to the applicants, stated:

> "We have engaged their cars on numerous occasions for the transportation of guests in our hotel to New York City. * * * I have also been transported by [fol. 214] them from my hotel to New York City. During my passage, I noticed that they picked up passengers from various other summer resorts located throughout Sullivan County and transported them to New York City."

The affidavit of Izzy F. Feldman, a hotel owner of Woodridge, New York, sworn and subscribed January 10, 1938, stated among other things, in referring to the applicants:

> "They operate seven passenger sedans and carry passengers to and *and* from summer hotels located in

Sulliva naind Ulster Counties. * * * The aforesaid Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman have been engaged in this type of transportation to and from my hotel since 1932. * * * I sincerely believe that their mode of transportation is extremely necessary and convenient for my own and my guests' needs."

The affidavit of Israel Levine, whose store the applicants used at 531 East 169th Street, New York City, subscribed and sworn January 14, 1938, among other things, in referring to the applicants, stated:

"I have personally seen them arranging for said trips with passengers."

The affidavit of Adela Dingenthal of the Bronx, subscribed and sworn January 14, 1938, among other things, said:

"In the summer of 1933 and 1934, I hired the aforesaid persons (referring to the applicants) to transport me and my family from their office to Accord in the County of Ulster. * * * My family and I have personally found that this method of transportation is [fol. 215] most convenient, and the most economical for our purpose."

The affidavit of Edna Livingston of the Bronx, subscribed and sworn January 14, 1938, stated that she had hired the car of applicants to take herself and her family from applicant's office in New York City to North Branch in Sullivan County, and said:

"Riding with us at the times that we were transported to North Branch, New York, by the aforementioned Crescent Mountain Service, were other passengers who were transported to other points in Sullivan and Ulster Counties. I specifically remember other passengers being taken to Kenoza Lake, Jeffersonville, White Lake, Mongaup Valley and Swan Lake."

(NOTE: A reference to the map will disclose that the operator serving all of these points in the one car was obviously operating over irregular routes and not between fixed termini.)

In the affidavit of Harry Trevax, the father of the applicant, Herman Trevax, sworn and subscribed January 14,

he told how his son had started the business with the other applicants joining in with him, and how he had helped his son, and showed the type of business they carried on when he stated:

> "My wife and I helped him out by answering phone calls and booking work."

It is most important to note that when the Crescent's right to operate was questioned in the beginning of 1938, the applicant brought everything it could, such as diaries showing the reservations for passengers, and all of the [fol. 216] aforesaid affidavits to prove its right to operate, by showing that it had been in operation. It made no claim at that time to any regular route, but merely sought to carry on the business it always had done. Even though it brought everything it could, no attempt was made to produce, and the record shows there was not produced any schedules of operation, such as a regular route operator would have had, and no tickets or ticket sale books, and no advertisements other than the throw-aways indicating the special door to door service, which advertised that it would take people from their home to their hotel. *These proofs clearly disclose that the applicant was not a scheduled operator on regular route between fixed termini, but was a special operator engaged in special operations, territorial in scope, and over irregular routes in unscheduled service, operated with seven passenger sedans.*

After this proof was submitted in the beginning of 1938, the Commission issued a compliance order, dated June 20, 1938, which purported to give to applicant the right to continue the business which he had done, but which erroneously gave him a regular route operation. This was because the Commission had not yet passed upon the many cases involving this question, and the *Nudelman* decision, MC 86772, 22 M. C. C. 275, had not of course been handed down.

Immediately after the issuance of this compliance order, protestants, including Hudson Transit, objected and filed protest, claiming that no regular route operation had ever been run by Crescent. The result of this protest was a letter, as shown by the docket, dated September 14, 1938, addressed to James F. X. O'Brien, Attorney for Hudson Transit Lines, referring to O-106, Docket MC-78980,

[fol. 217] Herman Treyax, etc. d/b/a Crescent, in which Director Blanning stated as follows:

> "The objections filed by you to the order issued in the above entitled proceeding have been duly considered, and you are hereby advised that the facts set forth in support of such objections have been deemed sufficient to warrant referring this case back to the field for further investigation."

The matter was then held up until the questions of law were settled by the Commission as a whole in the *Nudelman* case. These were finally settled when the Commission as a whole, on petition for reconsideration to it, rejected the petition and affirmed the action of the Commission by Division 5 in its determination and decision of the *Nudelman* case, 22 M. C. C. 275. Then the Commission merely proceeded to apply to the facts already in its possession, some of which have been set forth in this brief, the law determined in the *Nudelman* case, with the result that it handed down the compliance order of September 2, 1941, definitely and properly defining the special type of service which Crescent had done, and which it was entitled to continue to do. The Commission further carried out its duty by specifying the territory at each end which could be served by this special operation, and instead of leaving a vague twenty mile radius from Woodbourne, specified the places served by the applicant, which, incidentally, upon examination cover practically all of the townships within a radius of twenty miles from Woodbourne.

The contention that the September 2, 1941 compliance order had no basis in fact is clearly shown to be erroneous by reference to the facts as above mentioned and as contained in the official docket.

The applicant's own statements and presentation clearly [fol. 218] show that the only proper compliance order which could be issued was that of September 2, 1941. In fact, if Crescent had not made the deal with Mohawk, it undoubtedly would have been content to continue the type of operations conducted by it on the Grandfather date instead of trying to find some way to change the nature and type of those operations.

Point II

The petitioner has contended that the Commission had no right to issue the compliance order of September 2, 1941,

which definitely defined the Granfather operations of the applicant and fixed them as non-scheduled door to door operations over irregular routes, with vehicles having only six passengers beside the driver. Petitioner alleges that the Commission has no authority to restrict a carrier to scheduled or non-scheduled operations, but petitioner forgets that if that be part of the definition of the Grandfather operations, and be part of the inherent nature of those operations, then the duty of the Commission is to fully define the Grandfather operations before authorizing the issuance of a certificate without proof of necessity and convenience.

The petitioner quoted a part of Section 208 A of the Act, but left out the pertinent part. For the convenience of the Commission, we here quote the entire Section 208 A:

> "Sec. 208. (a) *Any certificate issued under section 206 or 207 shall specify the service to be rendered* and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, [fol. 219] at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirement established by the Commission under section 204 (a) (1) and (6): Provided, however, that no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require."

As found by the Commission in the *Nudelman* case, this section requires that the Commission "specify the service to be rendered".

If the contention of the petitioner be taken in its broad

aspect, to wit, that a Grandfather operator can add any kind of equipment it wants to as the demands of the public may require, then we would have a situation where a passenger carrier with the right to carry small express parcels could, pursuant to the public demand when larger parcels were presented, purchase and operate trucks over his route or between the authorized territories, and then, if a further demand arose for the carriage of liquid products in bulk in [fol. 220] tanks, purchase that type of equipment and engage in that particular business.

A mere statement of the ridiculous results which could follow the interpretation urged by petitioner is enough to show that it is not the correct interpretation. Such an interpretation would not foster a sound transporting system, but would destroy the efforts of Congress to foster and found such a system.

As pointed out in the *Nudelman* case, decided by the Commission, 22 M. C. C. 275, there is no restriction against the applicant adding to its equipment and facilities additional units of like nature, as long as it does not make additions which change the inherent nature and type of its operations.

All of these contentions were merely a part of the many questions raised and passed upon by the Commission in the *Nudelman* case, MC 86772, reported in 22 M. C. C. 275.

The Commission as a whole, by denial of petition for reconsideration, approved Division 5's decision in that case.

In the petition to which this is a reply, the petitioner makes further claim that a recent decision of the United States Supreme Court supports his contention that the Commission is without authority to issue a compliance order, such as the one of September 2, 1941. He cites the case of *United States of America and Interstate Commerce Commission* v. *Carolina Freight Carriers Corp.*, 62 Supreme Court Reporter 722, 86 L. Ed. 627, and also the accompanying case of *Howard Hall Co.* v. *United States*, 62 Supreme Court Reporter 732, 86 L. Ed. 639.

[fol. 221] Petitioner attempts to find from this case a prohibition by the Supreme Court against the Commission freezing a carrier to its operating status as of June 1, 1935. The case does not hold this at all. The case merely required the Commission to consider and make basic and specific findings on whether an operator, who claimed to be a carrier of general commodities, was in fact only a carrier of certain

specific commodities. On the other hand, an examination of the case fully supports the Commission's decision in the *Nudelman* case when considered by analogy. The Supreme Court said in referring to the difference between regular route carriers and irregular route carriers:

> "The statutory differences lie only in the territorial scope and pattern of the operation."

It should be noted that the Commission in the September 2, 1941 compliance order followed this difference as laid down by the Court, and defined applicant's territorial scope, and defined the true pattern of its operations.

In the *Carolina Freight Carriers* case, the Supreme Court also said:

> "Furthermore, the characteristics of the transportation service rendered are relevant to the territorial scope of the operations which the Commission may authorize."

The Court in that case likewise said:

> "Sec. 208 (a) requires that the certificate specify 'the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory [fol. 222] within which the motor carrier is authorized to operate.' It is clear from these provisions that the power of the Commission to authorize future operations within a designated 'territory,' rather than over specified routes or between fixed termini, fits the peculiar requirements of irregular route operators such as appellee. Authority to operate within a specified 'territory' may include permission to service all points in that area. On the other hand it may be restricted to designated points therein. Or as in the instant case, it may extend to all points in a part of that area and to selected localities in another part. The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission * * * (6, 7). As we in-

dicated in *Alton R. Co.* v. *United States, supra,* the purpose of the 'grandfather clause' was to assure those to whom Congress had extended its benefits a 'substantial parity between future operations and prior bona fide operations' (314 U. S. —, 62 S. Ct. 437, 86 L. Ed. —). We cannot say that that was denied in this case, if the limitations on the territorial scope of the operations are alone considered. While service to and from all points in the States included in the application was not allowed, the reduction was determined by the standard of substantiality of service. And consideration was given to the characteristics of irregular route carriers and their role in the national transportation system. That involved a weighing of specific evidence in light of the complexities of this transportation service. The judgment required is highly expert. Only where the error is patent may we say that the Commission transgressed. That is not this case."

[fols. 223-224] The Commission in the instant case merely carried out its obligation of preserving the substantial parity between the prior bona fide operations of applicant and those operations authorized for the future. It did this in the September 2, 1941 compliance order. It therefore merely did what the law requires.

Conclusion

The petition of Crescent Express Lines, Inc., should be dismissed in its entirety.

Respectfully submitted, James F. X. O'Brien, Practitioner and Attorney for Protestant, Hudson Transit Lines, Inc.

Dated: April 7, 1942.

Certificate of Service

I do certify that on April 10, 1942, a copy of the foregoing reply was served upon the attorneys for all parties of record in the within matter.

James F. X. O'Brien.

[fol. 225] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-78980

In the Matter of CRESCENT EXPRESS LINES, INC.

REPLY OF MOUNTAIN TRANSIT CORPORATION TO PETITION OF APPLICANT FOR RECONSIDERATION BY THE ENTIRE COMMISSION AND/OR TO REOPEN AND GRANT A HEARING—Filed April 13, 1942

Comes now the Mountain Transit Corporation, protestant in the above proceedings, and respectfully replies to the petition herein and prays that the same be denied and in support thereof states as follows:

Applicant's predecessors, a partnership doing business as Crescent Mountain Service, filed BMC-A application on February 12, 1936, and on March 26, 1937, filed a BMC-A2 form, in which it set forth in detail the type of operation which it conducted and for which it sought authority. (It even went so far as to indicate that because of its operations of sedans, that it was exempt from any and all provisions of the Motor Carrier Act and that the filing of the application should not be deemed a waiver of its rights thereunder.) In the Exhibit A attached thereto, the appli-[fol. 226] cant claimed that it went from New York City via the George Washington Bridge to Suffern and Wurtsboro, where traffic was distributed to the summer resorts within a radius of 20 miles from Woodbourne, N. Y. There was annexed a map indicating the New York area and the manner in which the applicant traveled to the area in and about Wurtsboro and *indicated by a large irregular circle as the area served by it.* Attached to the exhibits was a card which read as follows:

"7 Passenger Cars
Leaving Daily to All Parts of the Mountains
At Lowest Rates
(a number of places were listed)
From Your Home to Your Hotel
Boarding and Rooming Accommodations if desired.
Please Call to See Us At Our Residence
About Reservations.

CRESCENT MOUNTAIN SERVICE
531 East 169th Street."

There was no claim made for intermediate points below the mountain area.

On May 7, 1938, a compliance order was issued and on June 20, 1938, corrected compliance order was issued which was in conformance with the then existent practice of the Commission and prior to its determinations in the *Nudelman* case. The corrected order is that described in the petition on pages 1 to 2. Please note that in accordance with the application this order limited the operating authority in the mountain area to "intermediate and off-route points within 20 miles of Woodbourne", whereas the previous order, which had been vacated or which had been corrected and which had been dated May 7, 1938, had read, "All [fol. 227] Intermediate Points" and then, "Off-route points: Points and places within 20 miles of Woodbourne." In other words, the Commission, when it issued its compliance order of May 7, 1938, had at first improperly described the intermediate points and then issued its own corrected order of June 20, 1938, which is the order that the applicant would like to remain in force and effect, to indicate that the intermediate and off-route points were only within 20 miles of Woodbourne.

On June 6, 1938, Exceptions were filed by Protestants to this corrected order on the grounds that, amongst others, no regular route operation over the route was operated in the year 1935 and that the applicant at no time operated between fixed termini.

Prior to the issuance of the compliance orders, order to show cause had been served upon the partnership applicant to dismiss the application. An appearance was then made at informal hearings by an attorney representing the applicants; the application was referred back to the District Office; and additional proof of operation by affidavits and statements were submitted. It was based upon the BMC-A, the BMC-A2, and these affidavits and additional proof that the compliance order of June 20, 1938, as corrected, was issued. These affidavits were made by persons hereafter indicated and contained, among other things, the statements after their names:

1. Rubin Fried—January 10, 1938:

"The reason for their service is that they transport people to hotels located in all roads and by-roads, ob-

viating the necessity of their passengers having to use foot or other extraordinary means to get to their actual destination."

[fol. 228] 2. HARRY K. COHEN, hotel owner—Woodbourne, N. Y.—January 10, 1938:

"I have known Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman, doing business as Crescent Mountain Service, since May, 1932. Their business has been the transportation of guests of mine from New York City to my hotel, and from my hotel to New York City."

3. MOE BAIL—Woodbourne, N. Y.—January 10, 1938:

"We have engaged their cars on numerous occasions for the transportation of guests in our hotel to New York City. * * * I have also been transported by them from my hotel to New York City. During my passage, I noticed that they picked up passengers from various other summer resorts located throughout Sullivan County and transported them to New York City."

4. IZZY F. FELDMAN—hotel owner—Woodridge, N. Y.—January 10, 1938:

"They operate seven passenger sedans and carry passengers to and from summer hotels located in Sullivan and Ulster Counties. * * * The aforesaid Jacob Vangrofsky, Herman Trevax, Murray Galley and Morris Glickman have been engaged in this type of transportation to and from my hotel since 1932. * * * I sincerely believe that their mode of transportation is extremely necessary and convenient for my own and my guests' needs."

5. ISRAEL LEVINE—store proprietor—used by applicant at 531 East 169th Street, New York City—January 14, 1938:

"I have personally seen them arranging for said trips with passengers."

[fol. 229] 6. ADELA DINGENTHAL—Bronx, N. Y.—January 14, 1938:

"In the summer of 1933 and 1934, I hired the aforesaid persons (referring to the applicants) to transport

me and my family from their office to Accord in the County of Ulster. * * * My family and I have personally found that this method of transportation is most convenient, and the most economical for our purpose."

7. Edna Livingston—Bronx, N. Y.—a person who had hired a car of applicants for herself and her family—January 14, 1938:

"Riding with us at the times that we were transported to North Branch, New York, by the aforementioned Crescent Mountain Service, were other passengers who were transported to other points in Sullivan and Ulster Counties. I specifically remember other passengers being taken to Kenoza Lake, Jeffersonville, White Lake, Mongaup Valley and Swan Lake."

(Note: A refernce to the map will disclose that the operator serving all these points in the one car was obviously operating over irregular routes and not between fixed termini.)

8. Harry Trevax—the father of one of the applicants—January 14, 1938:

"My wife and I helped him out by answering phone calls and booking work."

In addition to the affidavits as aforementioned, there were submitted the books indicating the manner in which the partnership conducted this business, which were diaries showing reservations for passengers. At no time was there [fol. 230] ever produced any schedules of operation or any proof of operation which a regular route, terminal to terminal operator had used, nor any advertisements, holding outs, leases, or other information indicative of such an operation.

Predicated upon all of this proof, the Commission issued the compliance order of June 28, 1938, as corrected, limiting the applicant's service to points in New York City, on the one hand, and intermediate and off-route points within 20 miles of Woodbourne, on the other, and described a regular route as the method of operating between New York City and the area. Exceptions of protestant being duly filed to the order of June 20, 1938, the Commission

then had before it the complete record upon which it would have to make a determination as to the authority which the applicant was entitled to. There never was a dispute as to the facts.

In the interim, the Commission had before it numerous similar cases and obviously pending the determination of those cases, it withheld any action upon the Exceptions. Finally, the Commission, on February 25, 1941, in MC-86772 *et al., Irving Nudelman et als.*, determined the question. They found that numerous other applicants, operating an identical service and in an identical manner, were special operations and proceeded to issue certificates accordingly. Petitions for reconsideration therein to the entire Commission were subsequently filed and denied.

Accordingly on September 2, 1941, the Commission then issued its order herein stating, amongst other things,

> "*And it is further ordered*, that the previous order issued in this proceeding, describing the authority to [fol. 231] which applicant has been found to be entitled, upon compliance with the requirements therein specified, be, and it is hereby, vacated and set aside."

and in the same order stated:

> "This proceeding coming on for further consideration:
>
> *It appearing*, That a previous order having been entered in this proceeding authorizing the issuance of a certificate of public convenience and necessity upon compliance with the terms of the said order; that protests or exceptions to said order having been duly filed; and further consideration having been had;
>
> *It further appearing*, That applicant or predecessor in interest was, on June 1, 1935, and continuously since has been, in bona fide operation as a common carrier by motor vehicle in interstate or foreign commerce according to the specification *set forth as appended on the reverse side hereof or attached hereto* and made a part of this order; * * *."

(Appearing on the other side of the order)

> "The service to be rendered by applicant, as authorized by the order of which this is a part, in interstate or

foreign commerce as a common carrier by motor vehicle of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than six passengers in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during the season extending from June 1 to October 1, inclusive, over ir-
[fol. 232] regular routes, is as specified below:

Between New York, N. Y., on the one hand and, on the other, points and places in Sullivan County, N. Y., and the Townships of Hardenbergh, Denning, Rochester, Wawarsing, Gardiner, and Shawangunk, Ulster County, N. Y., traversing New Jersey for operating convenience only."

On October 9, 1941, applicant, which is the successor to the partnership, filed a protest and petition to stay the issuance of the certificate authorized in the order of September 2, 1941, wherein they urged (p. 4) that the compliance order of September 2, 1941, was issued without notice; that the applicant objects to the new compliance order by reason of the fact that it changes the content of the previous compliance order so as to direct a non-scheduled door-to-door service, over irregular routes, with vehicles having 6 passengers besides the driver; *that the real issue is whether the Commission has the right to restrict a carrier to vehicles of the sedan type;* and in conclusion prayed only that the order of September 2, 1941, should be vacated and set aside and that the order of June 20, 1938, should be reinstated. The petition was denied on September 17, 1942, by Division 5.

The petition herein raises the identical question but for the first time requests formal hearing. It should be denied for the following reasons:

a

There is no question whatever as to the right of the Interstate Commerce Commission to describe in a cer-
[fol. 233] tificate issued by it the service to be rendered and in case of operations not over specified route or between fixed termini, the territory within which the motor carrier is authorized to operate (section 208 (a))

b

All of the facts have already been submitted. No question of fact has heretofore been raised and the only question submitted to this Commission is that of law.

In the *Nudelman* case, MC-86772 *et als.*, decided February 25, 1941, and adopted by the Commission, there appears the following:

> "Upon further consideration we are of the opinion that our prior construction of section 208 (a) was in error. Simply stated, under this section we are directed to specify in any certificate issued under section 206 or 207 of the act, among other things, 'the service to be rendered,' subject to the proviso that we cannot restrict the right of a carrier 'to add to his or its equipment and facilities * * * as the development of the business and the demands of the public shall require.' In other words, we clearly have the power and duty to specify in any certificate the service to be rendered, except that we may not attach maximum limitations to the quantity of the service to be furnished. This construction is in line with our decision in *Pittsburgh-Weirton Bus Co., Inc., Com. Car. Application*, 10 M. C. C. 266, wherein we discussed the meaning of the proviso in question. In that case, the issue was presented as to whether that applicant had inaugurated a new operation by increasing *its service* between two [fol. 234] points from one round trip daily to 250 one-way trips daily. In deciding that question in the negative, we construed the proviso of section 208 (a) to mean (p. 270):
>
> > This prohibition protests the right of the carrier to expand not only its 'equipment' but also its 'facilities'. The only purpose of such expansion is to enable the carrier *to provide more service*, and this is very clearly indicated by the words 'as the development of the business and the demands of the public shall require'. It follows that 'terms, conditions, or limitations' in the certificate restricting *the service* of the carrier would be wholly inconsistent with this proviso." (Italics supplied.) [4]

[4]. In this report wherever any words or phrases are italicized, it should be understood that such emphasis is

"We did not conclude in that case, however, that we were without power to restrict a carrier to the use of certain types of vehicles for the purpose of describing the service to be rendered. What we found was that we have no power to restrict a carrier by the terms of its certificate from expanding the quantity of its service to meet the demands of the public.

"With this exception our power to specify in any certificate we issue the service to be rendered is complete. For instance, in *Schwerling Common Carrier Application*, 23 M. C. C. 459, we required the applicant carrier to maintain a schedule of not less than one round-trip per hour during certain periods. In other instances we have found it necessary, in order to specify definitely the character of the service to be rendered, to restrict a carrier to the use of certain types of equipment. For example: In *Miller Extension of Operations*, 21 M. C. C. 401 (prior report 12 M. C. C. 457), the au- [fol. 235] thority granted therein was restricted to liquid petroleum products in *tank trucks*; in *Myers Common Carrier Application*, 23 M. C. C. 451, authority was restricted to drive-away service; in *Central Truck-Away System, Inc., Com. Car. Application*, 19 M. C. C. 713, authority was restricted to truck-away service; in *Parcel Delivery Service, Inc., Contract Carrier Application*,[5] 8 M. C. C. 275, authority was granted to transport packages and parcels of merchandise by motor vehicle 'the equipment being limited to *motor cycle traffic cars with panel bodies*'; in No. MC-30727 (Sub-No. 1), *The Billy Baker Company Common Carrier Application*, __ M. C. C. __, decided August 23, 1940, authority was granted to transport, among other things, cement in dump trucks; and in *Elizabeth L. Barrows Common Carrier Application*,[6] 19 M. C. C. 179, author-

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[5] Although this application was later dismissed for reasons not pertinent herein, the same applicant on April 10, 1939, was issued a certificate containing the same restrictions pursuant to *Parcel Delivery Service, Inc., Common Carrier Application*, 13 M. C. C. 15.

[6] No exceptions to the order recommended by the joint board in this case were filed, and not having been stayed or postponed by us, it became effective as our order by opera-

ity was restricted to the transportation of not more than *six passengers per trip*. Thus, in numerous cases we have specified, or in effect specified, certain types of vehicles in describing the particular service to be rendered under the authority granted." (Sheets 4 to 6.)

In the same titled case in a prior report 22 M. C. C. 275, there is a complete description of the operations of sedans in the territory which indicates that the operations of applicant herein, from the complete record as submitted by it to this Commission, were identical both in type of service and in territorial scope. It is important to note that the [fol. 236] proof submitted to this Commission in the form of affidavits and statements makes claim only for the door-to-door territorial service.

The Commission is justified in the restrictions which it places on the geographical scope of applicant's operations. Section 206 (a) of the Act authorizes the Commission to issue a certificate without a showing of public convenience and necessity if the carrier or its predecessor in interest was in bona fide operation on June 1, 1935, within the territory for which applicant made application and has so operated since that time. Section 208 (a) requires that the certificate specify in the case of operations not over specified routes, the territory within which the motor carrier is authorized to operate. It is clear from these provisions that the power of the Commission to authorize future operations within a designated territory rather than over specified routes or between fixed termini fits the peculiar requirements or irregular route operators, such as the applicant. Authority to operate within a specified territory may include permission to service all points in that area. It may be restricted to designated points therein or may extend to all points in a part of the area and to selected localities in another part. The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission. See *U. S. of America v. Carolina Freight Carriers Corporation*, 86 L. Ed. 627.

Petitioner claims that the Commission has no authority to freeze a carrier to its status of June 1, 1935, and cites the *Carolina Freight* case for that purpose. The *Carolina*

Freight case uses the word "freezing" in the sense that the [fol. 237] Commission had possibly failed to include in the territory involved therein the right to carry certain specific commodities upon the proof of a holding out in respect thereto. In this instance, there has been no attempt to freeze the commodities to be transported since the only items involved were passengers and their baggage between certain points. In accordance with the theory pronounced in the *Carolina Freight* case, the Commission herein has determined upon the evidence submitted by the applicant that it was engaged on June 1, 1935, in an irregular route territorial operation conducted by the use of a specific type of vehicle in a certain type of service limited to certain periods of the year. It has not attempted to exclude the applicant from the right to carry passengers and their baggage as they had previously done, nor from operating as many number of vehicles of the type described as may be necessary to satisfy the needs of the public using that type of service.

The Commission has the right to issue a compliance order describing the Grandfather rights which it will issue in accordance with its findings pursuant to Section 206 and may make such order as is properly descriptive of the type of service which it finds was being rendered on June 1, 1935. Obviously, the applicant herein differs only with the form of the order which the Commission has or should issue. It feels that the previous order should be reinstated, whereas the Commission herein has determined that pursuant to its obligation and duty pursuant to Section 208 to specify the service to be rendered, that it must specify in the certificate just that service which the applicant was performing on June 1, 1935. To reinstate the previous order would not be [fol. 238] properly describing the service rendered on June 1, 1935, but would in effect grant greater authority than that which the applicant was entitled to on that day.

In view of the aforementioned, it is respectfully prayed that the petition herein be denied.

Dated, New York, N. Y., April 11th, 1942.

Respectfully submitted, Henry P. Goldstein, Attorney and Practitioner.

[fol. 239] CERTIFICATE OF SERVICE

I do hereby certify that there has on this 11th day of April, 1942, been served a copy of the foregoing reply upon all the parties of record to this proceeding.

(S) Henry P. Goldstein.

[fols. 240-241] ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of July, A. D., 1942.

No. MC 78980

CRESCENT EXPRESS LINES, INC., NEW YORK, NEW YORK

Upon consideration of the record in the above-entitled proceeding and petition filed by applicant against the order issued March 17, 1942; and good cause appearing therefor;

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission,

W. P. Bartel, Secretary.

[fol. 242] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC 78980

In the Matter of the Petition of CRESCENT EXPRESS LINES, INC.

PETITION TO REARGUE AND/OR REOPEN PETITION FOR RECONSIDERATION AND/OR TO FIX EFFECTIVE DATE OF ORDER—Filed August 10, 1942

Comes now Crescent Express Lines, Inc., and respectfully petitions this Commission.

1. That petitioner received a compliance order herein dated June 20, 1938.

2. That thereafter a new compliance order was issued on or about September 2, 1941.

3. Petitioner filed objections to said new order, which objections were overruled by order dated March 17, 1942. That a further petition to reconsider by the entire Commission was duly filed and was denied by an order dated on or about July 13, 1942.

4. Petitioner respectfully moves for leave to reargue the said denial of the petition for reconsideration and respectfully submits that the Commission may have overlooked [fol. 243] certain points made by the petitioner.

5. The new compliance order of September 2, 1941 was issued after a lapse of more than three years after the issuance of the order of June 20, 1938, and without new or additional evidence to justify the drastic change made; there was no hearing or findings made to support the new order of September 2, 1941.

6. That the form of the rights described in the order of September 2, 1941 is objected to where they differ from the rights described in the order of June 20, 1938, and also upon the further ground that the new order constitutes discrimination. The said order describes the rights granted as follows:

> The service to be rendered by applicant, as authorized by the order of which this is a part in interstate or foreign commerce as a common carrier by motor vehicle of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than six passengers in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during the season extending from June 1 to October 1, inclusive, over irregular routes, is as specified below:

7. In George Greenberg, doing business as Greenberg Mountain Service, MC 94298, and in other cases, the description of rights granted in certificate issued on or about July 29, 1942 is as follows:

> Passengers and their baggage, is special operations, during the season extending from the 15th day of May to the 30th day of September both inclusive, over irregular routes, traversing New Jersey for operating convenience,

[fol. 244] Between New York, N. Y., • • • Sullivan County, N. Y.

Restriction: The transportation authorized herein is limited to not more than six passengers in any one vehicle, excluding the driver and children under ten years of age who do not occupy a seat or seats.

8. The difference is unfair and discriminatory as there is no reason for the issuance of the form of the order of September 2, 1941 in the case at bar instead of the form used in the Greenberg Case.

9. In the case at bar applicant desires to seek judicial review of the order issued and the vacating of the order of June 20, 1938; a correction of the order of September 2, 1941 so as to describe the rights granted in the Greenberg Case will limit the issues to be presented for judicial determination.

10. The Greenberg certificate aforesaid, and others, were only issued on or about July 29, 1942, and therefore no reference was made to such form of issuance of rights in prior applications by Crescent Express Lines, Inc., to this Commission. The Greenberg form apparently is now used and a new compliance order so describing the rights granted in this case should be issued. The Greenberg form is new and probably is in line with the Commission's more advanced view of its powers under the Motor Carrier Act. If such form had been in use in September, 1941, the Commission probably would have issued such an order in the case at bar. There have been at least three compliance orders already in the case at bar and further corrections may still be had. The extent of the area served is, of course, different in the [fol. 245] case at bar than in the Greenberg Case. Applicant should have the benefit thereof; assuming that applicant is ultimately unsuccessful in its judicial review of the action of the Commission in vacating the order of June 20, 1938, especially where no hearing was ever had therein.

11. The order of September 2, 1941, and the orders of March 17, 1942 and July 13, 1942 herein do not contain any effective date and it is respectfully prayed that an effective date be fixed as of October 1, 1942 either in respect to said order of September 2, 1941, or if a corrective order is issued, with respect to such corrective order.

12. This application is made without prejudice to any rights which applicant may have to review the action of the Commission in vacating or setting aside the compliance order of June 20, 1938, and in making the order of September 2, 1941, or if this petition is granted in making any new order in the within matter which differs from the said order of June 20, 1938.

Wherefore it is respectfully prayed that this Commission reopen the proceeding herein and change the form of the order as above set forth, all without prejudice to the rights of the applicant to secure judicial review and that an early determination be made with respect to this petition.

Respectfully submitted, (S.) George H. Rosen, Attorney for Crescent Express Lines, Inc., Office & P. O. Address, 302 Broadway, Borough of Manhattan, City of New York.

[fols. 246-247] CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of August, 1942, served a copy of the foregoing petition on all parties of record by mailing a copy thereof postage prepaid.

(S.) George H. Rosen.

[fol. 248] BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of the Petition of CRESCENT EXPRESS LINES, INC.

Docket No. MC 78980

REPLY TO PETITION TO RE-ARGUE AND/OR REOPEN FOR RECONSIDERATION AND/OR TO FIX EFFECTIVE DATE OF ORDER—Filed August 14, 1942

Comes now, Hudson Transit Lines, Inc., protestant, and in reply to the Petition dated August 5, 1942 alleges that said Petition is frivolous and cannot be entertained under the law and the Commission rules. Protestant asks the dismissal of the Petition for the following reasons:

1. This is a second petition for reconsideration by the same party on the same subject matter. It cannot be con-

sidered under Commission Rule XV (f). As shown on the face of the Petition the previous petition to reconsider was denied by the entire Commission on July 13, 1942.

[fol. 249] 2. The compliance order of the Commission dated September 2, 1942 replaced a previous one of June 20, 1938. The 1938 compliance order never became effective due to protests against it, which the Commission then held to be justified. The 1941 compliance order was issued after long litigation before the Commission (Irving Nudelman, Common Carrier Application, No. MC 86772—28 M. C. C. 91) settled (in 1941) the question of whether the Commission could include a description of the type of vehicle to be used where such type was an integral part of the service and necessarily included to fully and adequately describe the service to be rendered as required in Section 208 (a) of the Act.

As soon as this law was settled, the Commission acted on the protests against the former compliance order and corrected it to correspond with the law. There was no unnecessary delay. The facts concerning Crescent's operations had previously been given by it to the Commission in its application and in its affidavits and exhibits and at informal hearing. The 1941 compliance order gave to Crescent the type of service it described and asked for. The 1941 order is fully supported by Crescent's own application and affidavits.

3. Petitioner's pleas in paragraphs 6, 7, 8, 9 and 10 of the petition are in effect a request to the Commission to amend the 1941 order in such a way as to help petitioner misconstrue and incorrectly portray the Commission's ac-[fol. 250] tion, in any proceedings Crescent may take to set aside and annul the Commission's order. The Commission, following the law as found in 28 M. C. C. 91, fully described Crescent's Grandfather operations and issued an order that it be permitted to continue same. In that description it included the type of vehicle because the character or type of service rendered by Crescent on June 1, 1935 was, among other things, differentiated by the use of vehicles carrying not more than six passengers, thus permitting the personalized flexible service not possible of repetition with a different vehicle. The Commission defined the service so as to comply with Section 208 (a) and confined Crescent to

service conforming to its own proof of convenience and necessity as indicated by its Grandfather operations.

Petitioner wants the Commission to amend this description by leaving out an integral part—i. e., the type of vehicle, and then by a separate "Restriction" prevent petitioner from using any other vehicle. Petitioner thinks that while the practical effect is the same, the change will produce a legal effect and make possible the annulment of the Commission's order on appeal to the Courts. Petitioner wants to be able to claim that the description of the vehicle relating to the number of passengers carried was not a part of the Commission's *description of the service to be rendered.*

It would be incorrect in fact and in law for the Commission to make this change. Petitioner's excuse that the form it desires was used in No. MC 95346, George Greenberg, [fol. 251] d/b/a Greenberg Mountain Service, should not be considered for the following reasons:

(a) It was not the truly correct way of describing the service as defined by the Commission in the Greenberg case at the top of Sheet 10 of its decision. The certificate should have followed the decision, and, if it had, it would have been similar to the present Crescent order; and

(b) The reason it appeared as a "Restriction" in the Greenberg case is that was a late Grandfather case where necessity and convenience had to be shown, and in which the applicant stipulated the restriction which undoubtedly caused the Commission to use the form it did. (See Sheet 2, Examiner's Report in the Greenberg case—filed July 24, 1941).

The present Crescent order is correct in its factual description of Crescent's Grandfather operations and is correct in form. It should not be changed and cannot properly be changed and still have it comply with the requirements of Section 208 (a).

In the event of appeal, the true issue can be set up and decided on the order as it is now. To change it would be to help petitioner create a fictitious issue which could only confuse rather than clarify.

[fol. 252] The territory granted in the Crescent 1941 order is as great, if not greater than that set forth in the 1938

order; and is far greater than that allowed in the Greenberg case. It is all that applicant asked for. Petitioner can have no complaint on that issue.

4. Petitioner pretends the Commission's order of September 2, 1941 has no effective date and asked that one be set. This is pure pretense and petitioner's way of laying the basis for an excuse for its unlawful operation of regular route operation between fixed termini with buses of the Manhattan Coach Lines, Inc., which unlawful operation has occurred sporadically and occasionally since the order became effective. Conscent has abandoned its authorized operations, and, in fact, all operations except the occasional and unlawful regular route operation. It also thus attempts to excuse its holding out to be a regular route bus operator recently made in connection with O. D. T. applications to coordinate with another unlawful operator, Royal Cadillac Service, Inc.

The order of September 2, 1941 was effective October 2, 1941 by its very terms. The fourth paragraph provides that Crescent shall not engage in any operations other than those authorized and that this should be effective "*30 days from the date of this order, unless on the Commission's own motion or for good cause shown it is otherwise ordered.*" [fols. 253-254] The Commission did not otherwise *order*, and the September 2, 1941 order became effective October 2, 1941.

It is also to be noted that petition of protest filed by Crescent was denied by Division 5 on March 17, 1942 and by the entire Commission on July 13, 1942.

The order of September 2, 1941 is now and for some time has been effective. It is about time Crescent stopped flouting it.

It is respectfully urged that the present Petition is without merit and should be dismissed.

Respectfully submitted, (S.) James F. X. O'Brien, Practitioner and Attorney for Protestant, Hudson Transit Lines, Inc., 17 Academy Street, Newark, New Jersey.

Dated: August 10, 1942.

CERTIFICATE OF SERVICE

I Hereby Certify that I have on this 12th day of August, 1942 served a copy of the foregoing Reply on all parties of record by mailing a copy thereof with postage prepaid to the attorneys of said parties.

(S.) James F. X. O'Brien.

[fol. 255] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC 78980

In the Matter of the Petition of CRESCENT EXPRESS LINES, INC.

REPLY TO PETITION TO REARGUE AND/OR REOPEN PETITION FOR RECONSIDERATION AND/OR TO FIX EFFECTIVE DATE OF ORDER —Filed August 15, 1942

Mountain Transit Corp., in reply to the petition herein, states as follows:

Applicant's predecessors filed a "grandfather" application setting forth in detail the type of operations which they conducted and for which they sought authority. On May 7, 1938, a compliance order was issued and on June 20, 1938 a corrected compliance order was issued. On June 6, 1938, Exceptions were filed by protestant to the corrected order, and on September 2, 1941, the Commission issued its order, the subject of this petition.

On October 9, 1941, applicant-petitioner herein filed a protest and petition to stay the issuance of the certificate authorized in the order of September 2, 1941, wherein they urged that the compliance order of September 2, 1941, was issued without notice, that the applicant objects to the new compliance order by reason of the fact that it changes the [fol. 256] content of the previous compliance order so as to direct a non-schedule door-to-door service, over irregular routes, with vehicles having 6 passengers besides the driver, that the real issue was whether the Commission had the right to restrict a carrier to vehicles of the sedan type; and in conclusion prayed only that the order of September 2, 1941, should be vacated and set aside and that the order of June 20, 1938, should be reinstated. The petition was denied on March 17, 1942, by Division 5.

On April 3, 1942, applicant petitioner filed a petition for reconsideration by the entire Commission and/or to reopen and grant a hearing in the within matter wherein it requested, amongst other things, that said compliance order dated September 2, 1941 be vacated, set aside, and the compliance order of June 20, 1938, reinstated. On July 13, 1942, the entire Commission denied said petition.

This petition again requests that the proceedings be reopened and that a new certificate in different form be issued, because this Commission in some other case had issued a differently worded certificate.

The petition herein should be dismissed for the following reasons:

(a) The relief requested has already been passed upon and determined by both Division 5 and the entire Commission.

(b) A certificate issued in another proceeding is not determinative of the form or wording of an order in this proceeding.

(c) Any certificate issued in the George Greenberg case MC 94298 was pursuant to a convenience and [fol. 257] necessity application wherein applicant agreed to the limitations contained therein. This application is pursuant to the grandfather clause and the order authorizing a certificate describes properly the type of service rendered on June 1, 1935.

In addition thereto, it is pointed out that the order of September 2, 1941, does contain an effective date reading as follows:

"• • • And That On And After 30 Days From Date Of This Order, unless on the Commission's own motion or for good cause shown, it is otherwise ordered, applicant shall not engage in any motor carrier operations not described herein or otherwise lawfully authorized."

The Commission has never ordered any change in the effective date of its order of September 2, 1941 and therefore, the same has been effective since October 2, 1941. The orders of March 17, 1942, and July 13, 1942 are denials of petitions and require no recitation of effective dates.

Wherefore it is respectfully prayed that the petition herein be dismissed.

Respectfully submitted, Henry P. Goldstein, *Attorney and Practitioner for Mountain Transit Corp.*
1450 Broadway New York City, N. Y.

Dated: New York, N. Y., August 14, 1942.

[fol. 258] CERTIFICATE OF SERVICE

I do hereby certify that there has on this 14th day of August, 1942 been served a copy of the foregoing reply upon all the parties of record to this proceeding.

(s) Henry P. Goldstein

[fol. 259] ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of September, A. D., 1942.

No. MC 78980

Crescent Express Lines, Inc.,
New York, New York

Upon consideration of the record in the above-entitled proceeding and petition filed by applicant against the order issued July 13, 1942; and good cause appearing therefor:

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission.

W. P. Bartel, Secretary.

[fol. 260] Interstate Commerce Commission

Washington

August 20, 1941.

No. MC-F-1607

Mohawk Lines, Inc.—Control—Crescent Express Lines, Inc.

Application of Mohawk Lines, Inc., of Cresskill, N. J., for authority under Section 5, Interstate Commerce Act, as amended, to acquire control, through ownership of stock, of Crescent Express Lines, Inc., of New York, N. Y.

Public notice of the filing of the above-entitled application having been duly served and opportunity having been

accorded for the submission of representations to the Commission, and good cause appearing: Such proceeding is assigned for hearing on September 4, 1941, at 9:00 o'clock a. m. (standard time), at the St. George Hotel, Brooklyn, N. Y., before Examiner John S. Higgins.

Any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof, the date of mailing of this notice to be considered as the time when said notice is served.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary.

[fol. 261] ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 9th day of December, A. D. 1941

No. MC-F-1607

Mohawk Lines, Inc—Control—Crescent Express Lines, Inc.

Upon consideration of the record in the above-entitled proceeding, and of applicant's petition, filed November 25, 1941, for the dismissal "without prejudice" of the application herein:

It is ordered, That said petition be, and it is hereby, granted to the extent only that dismissal is sought, and that said application be, and it is hereby, dismissed.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal.)

[fols. 262-263] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION

It is hereby stipulated by and between the attorney for the plaintiff-appellant, and the attorney for the intervenor-

defendant-appellee, Hudson Transit Lines, Inc., that, by order of the United States District Court made and entered December 23, 1942, the Answer of the defendant, Hudson Transit Lines, Inc., to the original complaint was permitted to stand as its Answer to the Amended Complaint, with the additional allegations denied.

It is further stipulated and agreed that this Stipulation be contained in the record in lieu of including the said Order in its entirety.

George H. Rosen, Attorney for Plaintiff-Appellant.
James F. X. O'Brien, Attorney for Defendant-Appellee, Hudson Transit Lines, Inc.

[fol. 264] [Endorsed:] File No. — Supreme Court, U. S. October Term, 1942, Term No. 1030, Crescent Express Lines, Inc., Petitioner vs. United States, et al. Stipulation as to record. Filed May 17, 1943.

[fol. 265] Supreme Court of the United States

[Title omitted]

Statement of Points and Designation of Record to be Printed—Filed May 24, 1943

I

Appellant, Crescent Express Lines, Inc., states that in its brief and oral argument on its appeal in the above entitled cause it will rely upon all the points stated in its assignment of errors therein.

II

The entire record in this cause as filed in this Court is necessary for consideration of the point stated by the appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court except the Motions to Affirm and Statements making against Jurisdiction filed by the appellees.

Also include stipulation of attorney for intervenor-appellee, Hudson Transit Lines, Inc., with respect to inclusion of order dated December 23, 1942.

Dated: May 20, 1943.

Yours, etc., George H. Rosen, Attorney for Plaintiff-Appellant, Office & P. O. Address, 302 Broadway, New York City.

[fols. 265a-266] To: Charles Fahy, Esq., Solicitor General, Department of Justice, Washington, D. C. Daniel W. Knowlton, Esq., Chief Counsel for Interstate Commerce Commission, Washington, D. C. Henry P. Goldstein, Esq., 1450, Broadway, New York City. James F. X. O'Brien, Esq., 17 Academy Street, Newark, New Jersey.

[fol. 267] State of New York,
County of New York, ss:

Beatrice Martin, being duly sworn, deposes and says that on the 20th day of May, 1943, deponent mailed copies of the Statement of Points and Designation of Records to be printed enclosed in postpaid wrappers in a post office box maintained by the United States Government at 302 Broadway, Borough of Manhattan, New York City, addressed to the following:

Charles Fahy, Esq., Solicitor General, Department of Justice, Washington, D. C. Daniel W. Knowlton, Esq., Chief Counsel for Interstate Commerce Commission, Washington, D. C. Henry P. Goldstein, Esq., 1450 Broadway, New York City. James F. X. O'Brien, Esq., 17 Academy Street, Newark, New Jersey.

Beatrice Martin.

Sworn to before me this 20th day of May, 1943. Rebecca Rodoff, Notary Public, Kings County.

[fol. 268] [File endorsement omitted.]

[fol. 269] Supreme Court of the United States

Order Postponing Further Consideration of the Question of Jurisdiction—June 7, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits and the case is transferred to the summary docket.

Endorsed on Cover: File No. 47,531, D. C. U. S., Southern New York. Term No. 65. Crescent Express Lines, Inc., Appellant, vs. The United States of America, Interstate Commerce Commission, Hudson Transit Lines, Inc., et al. Filed May 17, 1943. Term No. 65 O. T. 1943.